

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.192/08

Friday this the 20th day of February 2009.

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

K.Mani,
S/o.Kunju Pillai,
(Ex-Casual Labourer, Southern Railway,
Trivandrum Division, Trivandrum)
Residing at Malan Villai Veedu,
Karavilai Nallur, Marthandom P.O.,
Kanyakumari District.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.
2. The Deputy Chief Engineer (Construction),
Southern Railway, Trivandrum Division,
Trivandrum – 14.
3. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
4. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14.

...Respondents

(By Advocate Ms.P.K.Nandini)

This application having been heard on 27th January 2009 the Tribunal
on 20th February 2009 delivered the following :-

O R D E R

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is a pre 1.1.1981 retrenched casual labourer. He has filed this Original Application seeking a direction to the respondent railway to re-engage and absorb him as a Group 'D' employee in the Trivandrum Division of Southern Railway, in preference to and at par with his juniors with lesser number



of days of casual service than him and to grant all consequential benefits thereof including fixation of pay, seniority and allowances.

2. The facts in brief are that the applicant was engaged as a casual labourer on 18.1.1979 under the Permanent Way Inspector (Construction), Nagercoil Junction and he continued in service till 5.12.1980, that is the date on which he was retrenched from service for want of work. According to him, he had 706 days of casual service at his credit. He along with 51 others had filed O.P.No.5365/81 before the Hon'ble High Court of Kerala seeking a direction to the respondents to consider them for regular absorption in preference to their juniors. The applicant was at Sl.No.21 in the array of petitioners. The Hon'ble High Court directed the Divisional Personnel Officer, Southern Railway, Trivandrum to consider their request for regular appointment to Class IV posts vide judgment dated 12.3.1982 and to communicate the decision to the petitioners within three months. The respondents, thereafter, passed order dated 30.9.1982 stating that the petitioners had lesser periods of service than most of the casual employees of the construction wing whose services were terminated on completion of the construction activities. They were also informed that their claim for empanelment was pre-mature as none of them had the total number of days of work to their credit compared to the junior most project casual labourer already empanelled. Three of the petitioners in O.P.No.5365/81 (supra) – S.Balraj, D.Sukumaran & J.Appukuttan – again approached the Hon'ble High Court of Kerala vide O.P.No.8673/82 challenging the aforesaid order dated 30.9.1982. The same was also disposed of vide Annexure A-3 judgment dated 18.10.1985 observing that the question of decasualisation and absorption of the retrenched casual workmen had come up for consideration before the Apex Court in the decision reported in **Inder Pal Yadav Vs. Union of India [(1985) 2 SCC 648]** and held that the petitioners also would be entitled for the benefit of



the formula of the Railways as accepted by the Supreme Court. Counsel for the Railways appearing in the said OP submitted that benefits of empanelment and absorption in terms of the formula as contained in the above decision will be given to the petitioners also in accordance with their seniority among retrenched casual employees. Noting the aforesaid assurance the petition was disposed of.

The directions of the Apex Court in Inder Pal Yadav's case (supra) is as under :-

"3. The relevant portions of the scheme read as under:

5.1 As a result of such deliberations, the Ministry of Railways have now decided in principle that casual labour employed on projects (also known as 'project casual labour') may be treated as temporary on completion of 360 days of continuous employment. The Ministry have decided further as under:

(a) These orders will cover:

- (i) Casual labour on projects who are in service as on January 1, 1984; and
- (ii) Casual labour on projects who, though not in service on January 1, 1984, had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or will complete the said prescribed period of continuous employment on re-engagement in future.

Xxx xxxx xxx

Burdened by all these relevant considerations and keeping in view all the aspects of the matter, we would modify part 5.1(a)(i) by modifying the date from January 1, 1984 to Janury 1 1981. With this modification and consequent rescheduling in absorption from that date onward, the scheme framed by Railway Ministry is accepted and a direction is given that it must be implemented by recasting the stages consistent with the change in the date as herein directed.

6. To avoid violation of Article 14, the scientific and equitable way of implementing the scheme is for the Railway Administration to prepare, a list of project casual labour with reference to each division of each railway and then start absorbing those with the longest service. If in the process any adjustments are necessary, the same must be done. In giving this direction, w are considerably influenced by the statutory recognition of a principle well known in industrial jurisprudence that the men with longest service shall have priority over those who have joined later on. In other words, the principle of last come first go or to reverse it first come last goo as enunciated in Section 25-G of the Industrial Disputes Act, 1947 has been accepted. We direct accordingly."

3. As the applicants were not granted the benefits arising out of the aforesaid judgment of the Apex Court in the case of Inder Pal Yadav, they have again approached this Tribunal vide O.A.142/87. The said OA was also disposed of vide Annexure A-4 order dated 7.9.1989 and the operative part of the same is as under :-

"3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The respondents have indicated that the names of the applicants who were retrenched on 1.8.81 have been included in the integrated seniority list of Project Casual Labourers of Trivandrum Division. However, they have expressed their helplessness in verifying their casual service, as the original service cards are in the possession of the applicants. The applicants also seem to be in the dark about their position in the combined seniority list which will be the determining factor for their re-engagement or granting of temporary status. We are also not above to appreciate the stand taken by the respondents that the question of grant of temporary status will be considered only on their re-engagement. In accordance with the scheme of the Railway Board's quoted and discussed in the judgment of the Supreme Court in Inderpal Yadav's case, "the Ministry of Railways have now decided in principle that casual labour employed on projects (also known as 'project casual labour') may be treated as temporary on completion of 360 days of continuous employment". The scheme also envisages that those who did not complete 360 days on 1.1.81, but would do so after that date would also be treated as temporary on completion of 360 days of service. Para 2501 of the Indian Railway Establishment Manual also states that Casual Labourer is treated as temporary after expiry of six months of continuous employment and he acquires temporary status. This means that the question of conferment or grant of temporary status does not arise. The Casual Labourer automatically acquires and is treated as one with temporary status automatically as soon as he completes a certain period of casual service. In **L.Robert D'Sourza v. the Executive Engineer, Southern Railway, 1992(1) SLR 864**, in the matter of acquisition of temporary status prior to the termination of service, the Supreme Court observed as follows:

"Had his service not been terminated, the Railway administration could not have denied him the status and this status he would have acquired long back. If by operation of law, to wit Rule 2501 the appellant had acquired the status of temporary railway servant by rendering continuous uninterrupted service for more than six months, his service could not have been terminated under rule 2505."

Thus it is clear that by efflux of prescribed time and operation of law the Casual Labourer acquires temporary status automatically even before termination of his service. Thus the question of grant of temporary status and that also after such a disengaged labour is re-engaged does not arise. In the facts an circumstances we allow this application to the extent of the directions as indicated below:



(a) The applicants are directed to make a representation within a period of one month from the date of communication of this order along with all necessary evidence regarding their period of casual employment, to seek conferment of temporary status in accordance with the directions given by the Supreme Court in Inderpal Yadav's case. The respondents thereafter should dispose of the representations after taking into account the evidence produced by the applicants as also the records available with the respondents and pass suitable orders about conferment of temporary status within a period of three months from the date of receipt of the representations.

(b) The respondents are directed to bring to the notice of the applicants within a period of one month from the date of communication of this order the seniority list as on 1.1.81 prepared in accordance with the directions of the Supreme Court and invite representations from the applicants within a period of one month thereafter. The representations, if any, against the integrated seniority list should be disposed of within a period of two months from the date of receipt of the representations.

(c) Based on the seniority of the applicants, as determined through the disposal of their representations as directed in (b) above, the respondents are directed to give to the applicants notional dates of re-engagement reckoned by the date of their immediate juniors. The applicants should be given all benefits of seniority, temporary status, absorption in the regular cadre and re-engagement and other consequential benefits but without arrears of pay on the basis of the dates of notional re-engagement. Action on the above lines should be completed within a period of three months from the date of disposal of the representations under (b) above.

4. There will be no order as to costs."

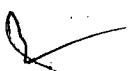
4. The applicant made representation dated 7.10.1989 and by Annexure A-5 letter dated 14.12.1989 the Executive Engineer (Construction), Palayankottai disposed of the same stating that he had not completed the requisite service of five years as on 1.1.1981 to be granted temporary status from 1.1.1981 in terms of Railway Board's letter No.E(NG)11/84/CL/41 of 11.9.1986. It is also submitted that the applicant has not put forth his claim to the Railway Administration before 31.3.1987 to include his name in the seniority list of Project Casual Labourers of pre 1.1.1981 of TVC Division (Open Line) as per the directive issued by the Hon'ble Supreme Court of India in their judgment dated 23.2.1987 while disposing the WA (Civil) No.332/86. However, to adhere to the Annexure A-4 order dated 7.9.1989 of this Tribunal the applicant's service



particulars have been advised to IRM (P)/TVC to include his name in the seniority list of Project Labourers of pre 1.1.1981 list vide letter No.P.363/CN/PCO/SC of 14.12.1989 and to consider him for re-engagement according to his turn as and when vacancy arises. According to the applicant, he had also submitted his name for inclusion in the list of casual labourers.

5. Again, the applicant approached this Tribunal along with 29 others vide O.A.1795/91 when the respondents failed to engage them but engaged 117 casual labourers in the open line on 22.2.1990. Their demand was to re-engage them also along with those 117 persons and to give them back ages. The said OA was first dismissed by the Tribunal vide order dated 6.7.1994 without going into the merit of the case. The Apex Court, vide order in Civil Appeal No.8553/97 remanded the said O.A for fresh disposal on merits. However, this Tribunal was again dismissed the said O.A vide Annexure A-6 order dated 30.4.1998. The submissions of the respondents in the said OA was that the names of some of the applicants 1 to 6, 10 to 11, 13 to 16, 18, 19, 21 to 25 and 27 to 29 (who were retrenched in the year 1980) were project casual labourers retrenched after 1.1.1981 and their names have already been registered in the live register of casual labourers as per the scheme evolved by the Railways pursuant to the directions of the Apex Court in Inder Pal Yadav's case (supra) and their re-engagement will be in their turn as per the seniority list as on 1.1.1985. They have also submitted that the names of some other applicants do not figure in the gradation list. The applicant was the 7th in the said joint application and as stated by the respondents, his name did not figure in the gradation list. Noting the aforesaid submissions of the respondents, the said OA was again dismissed as on 30.4.1998.

6. According to the applicant, while the position was as above, he came to



know in the year 2007 that some of those who were applicants along with him were again re-engaged and absorbed as Group 'D' employees in pursuance of the directions of this Tribunal in O.A.633/03 dated 30.3.2004 in which the following directions were given by this Tribunal :-

"11. In the conspectus of facts and circumstances, I am of the view that the applicants are entitled for considering for absorption in the said vacancies irrespective of the fact that they have crossed the age limit. If there is still vacancies in existence for the said period, which is not actually filled, the applicants should be considered, if they are otherwise eligible.

12. In the light of what is stated above, I direct the respondents to review the entire matter with the above observations and reconsider the applicants for absorption forthwith, if they are found otherwise eligible and pass appropriate orders granting them benefit if any, and communicate the same within a period of four months from the date of receipt of a copy of this order.

13. The O.A is disposed of as above. In the circumstance, no order as to costs."

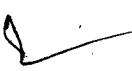
7. He has, therefore, made Annexure A-7 representation dated 25.2.2007 to the 1st respondent with a copy to the 4th respondent requesting to absorb him also as a Group 'D' staff.

8. The contentions of the respondents in their reply statement is that the applicant, being a pre 1.1.1981 retrenched casual labourer, has not submitted his application before the cut off date 31.3.1987 for inclusion of his name in the supplementary casual labour register. They have also submitted that all the cases filed by such retrenched casual labourer who have not registered their claim prior to 31.3.1987 have been dismissed by this Tribunal earlier. According to them, O.A.Nos.211/96, 1275/96, 89/97, 568/00 and 598/03 are some of those cases in which the claims of the applicants for absorption was rejected by this Tribunal. They have also submitted that the aforesaid decisions of this Tribunal was in tune with the decision of the Apex Court in the case of **Dakshin Railway Employees Union V. General Manager, Southern Railway & Ors. (AIR 1987**

SC 1153) wherein it has been held by the Apex Court that the casual labourers retrenched prior to 1.1.1981 would be entitled to include their names for re-engagement only if they register their names prior to 31.3.1987. It was also pointed out that going by the applicant's own submission, the Annexure A-5 letter issued to him was as back as 14.12.1989 and he was informed that he had not put forth his claim to include his name in the seniority list of project casual labourers of pre 1.1.1981 of the Trivandrum Division before 31.3.1987 as per the directions of the Supreme Court in its judgment dated 23.2.1987.

9. The applicant in his rejoinder has submitted that in view of Annexure A-5 letter dated 14.12.1989 issued by the competent authority in compliance to the directions of this Tribunal in Annexure A-4 order, the respondents cannot now turn around and say that his name was not in the list of retrenched casual labourers. He has also submitted that list of pre-1.1.1981-retrenched casual labourers and post-1.1.1981-retrenched casual labourers have been merged together in a common list for future absorption as directed by the Apex Court in Inder Pal Yadav's case (supra). The applicant having 706 days of service is eligible to be absorbed in preference to persons with lesser days of service.

10. Respondents have filed additional affidavit in which they have submitted that Annexure A-5 letter dated 14.12.1989 stated to have been issued in compliance of the Annexure A-4 order of this Tribunal dated 7.9.1989 has never been received by DRM (P)/TVC. According to them even if the said letter was received, it has to be presumed that it might have been acted upon and decided not to include the name of the applicant in the list concerned as he had not registered before the cut off date 31.3.1987. They have also submitted that the last date fixed as 31.3.1987 for the inclusion of the names of the casual labourers retrenched prior to 1.1.1981 in the list was in pursuance to the Apex



Court judgment in DREU Vs. GM/S. Railways & Ors (supra). The fixation of the said date has not been varied by any authority so far. They have also relied upon the judgment of the Hon'ble High Court of Kerala in OP No.22849/99 dated 7.12.2005 (Annexure R-1) wherein it has been stated that it was not possible to include any person to submit an application beyond the date fixed by the Supreme Court. Therefore, the authority who has issued the Annexure A-5 is not competent to advise DRM/P/TVC to include the name of the applicant who has not registered his name before the cut off date 31.3.1987.

11. I have heard Mr.T.C.Govindaswamy for the applicant and Ms.P.K.Nandini for the respondents. Admittedly the applicant was a pre 1.1.1981 retrenched casual labourer. No doubt, he has been fighting for his absorption and regularisation as a Group'D' employee from 1981 itself. He along with other casual labourers had earlier filed OP No.5365/81 before the Hon'ble High Court and OA 142/87 before this Tribunal. The O.P.No.5365/1981 was filed for a direction to the respondents to appoint him to a Class IV post. The High Court disposed of it on 12.3.1982 with the directions to the respondents to consider the representation of the petitioners including the applicant herein. O.A.142/1987 (supra) was also filed by the applicant and other project casual labourers to direct the respondents to empanel them for regular absorption with effect from 1.1.1993. It was also disposed of on 7.9.1989 with the direction to the applicants to make suitable representation to seek conferment of temporary status in accordance with the judgment of the Apex Court in Inder Pal Yadav's case (supra) and to bring it to the notice of the applicants regarding the seniority list as on 1.1.1981 prepared in accordance with the directions in the said judgment. After several years, the applicant along with some others filed O.A.1795/1991 before this Tribunal for a direction to the respondents to reengage the applicants and to grant them temporary status and regularization with due seniority along



with the 117 persons engaged on 22.2.90 and to give them back wages for this period. While disposing of the aforesaid O.A vide order dated 30.4.1998, this Tribunal noted the submission of the respondents that the names of the retrenched casual labourers whose names have been registered in the live register of casual labourers as per the scheme evolved by the Railways pursuant to the directions of the Supreme Court in Inder Pal Yadav's case will be re-engaged in the order of their seniority and applicant's name did not figure in the gradation list. The applicant did not challenge that order before the High Court/Supreme Court. Neither in O.A.142/1987 nor in O.A.1795/1991 nor in the proceedings before the High Court, the applicant had ever mentioned about the existence of the Annexure A-5 letter dated 14.12.1989 alleged to have been issued to him by the Executive Engineer, Construction, Palayankottai. The O.A.1795/1991 has attained its finality with the issuance of the order therein on 30.4.1998. Now, it is after another ten years, the applicant has again raked up the same issue by filing this O.A seeking a direction to the respondents to re-engage and absorb him as a Group'D employee in the Trivandrum Division of Southern Railway, in preference to and at par with his juniors with lesser number of days of casual service than the applicant and direct further to grant all consequential benefits thereof including fixation of pay, seniority and allowances. The reason given by the applicant in his Annexure A-7 representation dated 25.2.2007 for re-agitating the issue again is that this Tribunal in O.A.633/2003, 271/2006 etc. has held that re-engagement and absorption are to be done without any age limit. The applicant is only trying to mislead this Tribunal by saying so because he is well aware that the reason for not re-engaging and absorbing him in the regular service of the respondents is that he had not got his name registered before 31.3.1987 as required under the judgment of the Apex Court in the case of Dakshin Railway Employees Union (supra). This position has also been reiterated by the Hon'ble High Court in its judgment in

(Signature)

O.P.No.22849/1999(T) – Senior Divisional Personnel Officer, Southern Railway v. Sunil K Rani & others (Annexure R-1) in which it was held as under:

"The challenge is on Ext.P7 award passed by the Industrial Tribunal, Kollam. The Tribunal has held that the 1st respondent is liable to be included in the list of persons eligible for re-engagement. Admittedly the 1st respondent has not submitted the application within the time permitted by the Supreme Court, namely 31.3.1987. This crucial aspect has missed the notice of the Tribunal. Unless it is permitted by the Supreme Court, the petitioner cannot include any person to submit an application beyond the date fixed by the Supreme Court. Since the award suffers from the infirmity as above, it is set aside and the Writ Petition is allowed."

12. In view of the above facts and legal position, it is my considered view that this is a case of res judicata and no relief as prayed for by the applicant can be granted to him. The applicant cannot, therefore, succeed in his vein attempt. This O.A is accordingly dismissed. There shall be no order as to costs.


GEORGE PARACKEN
JUDICIAL MEMBER

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