

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 198 of 2013

THURSDAY, this the 23rd day of May, 2013

CORAM

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

V. Chandrasenan Nair, Aged 59 years,
S/o. Velayudhan Nair,
Retrenched Casual Labourer,
Southern Railway, Trivandrum Division,
Residing at Vadakke Ayaniarathala,
Perumpazhathoor (PO), Neyyattinkara,
Thiruvananthapuram District.

..... Applicant

(By Advocate – Mr. Martin G. Thottan)

V e r s u s

1. Union of India, represented by
The General Manager, Southern Railway,
Headquarters Office, Park Town,
Chennai – 3.
2. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14

..... Respondents

(By Advocate – Mr. Thomas Mathew Nellimoottil)

This application having been heard on 16.05.2013, the Tribunal on
23-05-13 delivered the following:

O R D E R

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant in this O.A seeks a direction to the respondents to consider him for absorption in a Group-D post which requires only a lower medical classification and to which he is eligible to be considered on par with persons having lesser number of days of service with all consequential benefits.

2. The applicant was considered for absorption as Trackman as per his turn in the merit seniority list. He could not be absorbed solely on account of the fact that his age was beyond the prescribed upper age limit. O.A. No. 514/2006 filed by the applicant was allowed directing the respondents to consider him for absorption notwithstanding the Railway Board order fixing the maximum age limit. The Writ Petition filed before the Hon'ble High Court of Kerala against the order of this Tribunal was disposed of. The Railways filed Special Leave Petition before the Hon'ble Supreme Court in the matter which is pending. The applicant was not absorbed on the ground of discrepancy in his name as per the records maintained by the Railways. O.A. No. 91/2010 filed by the applicant was allowed directing the respondents to reconsider his absorption in the light of the decision in O.A. No. 514/2006. Pursuant to the said order, the applicant was subjected to medical examination. He was found fit only in Cee-Two medical classification. No action was taken in the appeal preferred by the applicant against the medical classification. O.A. No. 629/2011 filed by the applicant was disposed of with a direction to conduct the medical examination of the applicant by a medical board with one ophthalmologist from the Kerala Health Service and to reconsider his claim for regular absorption as Trackman in case he has normal vision using spectacles. The medical board found him fit only in Cee-Two category with glasses. The applicant had applied vide Annexure A-4 dated 26.11.2012 to appoint him to a lower post considering his Cee-Two medical category. There is no response to Annexure A-4. Aggrieved, he has filed this O.A.

3. The applicant contended that he is similarly situated like the applicants in OA Nos. 372/2010, 958/2011, 1070/2011 and other connected cases and is entitled for similar treatment and absorption on par with his juniors with all consequential benefits.

4. The respondents in the reply statement submitted that retrospective effect was not allowed by this Tribunal on earlier occasions although the applicant had prayed for benefit of absorption with effect from 02.06.2010. Therefore, the prayer in the present O.A for benefits on par with the persons having lesser number of days of service is not maintainable as hit by res judicata. The applicant has not proved that similarly placed persons in compliance of orders in O.A. Nos. 372/2010, 958/2011 and 1070/2011 have been granted such absorption on par with persons having lesser number of days of service. The applicant is already 59 years of age, his date of birth being 11.11.1953. The records produced by the applicant were not free from discrepancies, which resulted considerable delay in considering his case. Annexure A-3 order categorizing the applicant as Cee-Two with glasses is dated 08.11.2012.

4. I have heard learned counsel for the parties and perused the records.

5. The direction of this Tribunal in O.A. No. 629/2011 is to consider the applicant for absorption as Trackman in case he has normal vision, using spectacles and not in a Group-D post. The relief sought in this O.A is consideration of the applicant for Group-D post based on the medical categorization in Cee-Two with glasses. The applicant has represented for

his absorption in a lower post considering his Cee-Two classification vide Annexure A-4 dated 26.11.2012 only by which time he had already entered the age of 60 years which is the age of superannuation. It is inconceivable to direct the respondents to appoint the applicant who is already 59 1/2 years old. The applicant has to take a major share of blame for the delay in considering his absorption in the service of the Railways. As rightly contended by the respondents, his claim in this O.A is hit by res judicata. The applicant has failed to substantiate his claim for absorption in a Group-D post on par with persons having lesser number of days of service than him with all consequential benefits at the age of 60.

6. Having no merit, the O.A is dismissed with no order as to costs.

(Dated, the 23rd May, 2013)


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

CVR.