

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.234/08

Tuesday this the 6th day of May 2008

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

S.Thangavelu,
S/o.Samikkan Nadar,
Retrenched Casual Labour,
Southern Railway, Trivandrum Division.
Residing at 110-A, Kanjiravilai, Eraniel,
Neyyoor 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 Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum.
3. The Divisional Personnel Officer,
Southern Railway, Divisional Office,
Trivandrum.

...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 6th May 2008 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is a retrenched casual labourer of Southern Railway Trivandrum Division. He has submitted Annexure A-1 casual labour cards, according to which, he has got 824 days of casual labour service at his credit. He had approached this Tribunal earlier along with others by filing O.A.614/06 and the same was allowed by a common order dated



14.3.2007 making it clear that the prescription of upper age limit need not be insisted upon those retrenched casual labourers whose names already figure in the Live Casual Labour Register maintained by the respondents. However, the respondents carried the aforesaid order of this Tribunal before the Hon'ble High Court of Kerala in W.P.(C) No.29813/07 (S) and vide judgment dated 11.12.2007 it was held that the judgment in W.P.(C) No.16330/06 and connected cases dated 29.11.2007 would apply in the said case also. The applicant has also filed a copy of the judgment in W.P.(C) No.16330/07 (S) and connected cases as Annexure A-2 in this O.A. The said order was arising out of the order of this Tribunal in O.A.271/06 and connected cases. The Hon'ble High Court after considering the issue in the case, held as under :-

"12. We have given anxious consideration to the contentions of both sides. Going by Inder Pal Yadav's case (cited supra), those who acquire 360 days' service are entitled to be absorbed into the regular establishment. It is common case that before 2001, without any reference to the age limit and in many cases, without insisting for the completion of 360 days' service, the persons included in the live register of casual labourers were absorbed into Group D post. After the judgment of the Apex Court in Inder Pal Yadav (cited supra), there was considerable delay in considering the claim of the party respondents before us, who were the applicants before the Central Administrative Tribunal. The party respondents would accuse the Railways for the delay, as a result of which they became over-aged. The Railways would submit that there were not sufficient number of vacancies and as and when vacancies arose, the exercise of absorption was being undertaken.

13. We notice that the applicants belong to a vanishing category and a liberal view was taken by the Tribunal in their case. The said view taken in a similar case by the Central Administrative Tribunal has been affirmed by a Division Bench of this Court also in W.P.(C) No.30832/04. The relevant portion of the said judgment reads as follows :-

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"The Tribunal had noticed that these instructions had come long after the petitioners had been brought to the live register and the Railway Administration had not taken note of the circumstances that it was not a case of fresh recruitment as such. There was no such embargo, prescribed as could be gathered from the judgment of the Supreme Court in Inder Pal Yadav. It was for the above reason that the Tribunal had directed that the cases of applicants should be considered ignoring the age factor.

The applicants are a vanishing group and as the view point of the Railway Administration had also been taken notice of, we do not think that the stand taken by the Tribunal was so unreasonable for this Court to interfere."

We notice that the above judgment has become final, as the Railways did not challenge it before the Hon'ble Supreme Court. So, we are also of the view that it is not just or proper to interfere with the order of the Central Administrative Tribunal, insofar as it directs absorption of casual labourers, who have completed 360 days' service. The Tribunal has set aside the Railway Board's Circular Nos.E(NG) II-99/CL/19 dated 28.2.2001 and E(NG) II/99/CL/19 dated 20.9.2001. We notice that, in these writ petitions, there was no prayer for quashing those circulars. Therefore, the same is unjustified. Even if those circulars are not quashed, still, the applicants are entitled to get relief, as they were being absorbed on the strength of the judgment in Inder Pal Yadav's case (cited supra). The said judgment and the subsequent orders issued by the Railways do not prescribe any age limit in the matter of absorption. Only for the first time age limit was insisted after the issuance of the above said circulars. So, we declare that both the circulars will not apply to the absorption of casual labourers, who have completed 360 days' service and are being absorbed as per the decision in Inder Pal Yadav's case (cited supra). The Umadevi's case (cited supra) has no application to the facts of this case, as in this case, the absorption is being made by the Railways as per the order of the Apex Court in Inder Pal Yadav's case (cited supra). The only dispute is regarding the age limit. The liability for absorption does not emanate from the order of the Tribunal.

In the result, these writ petitions are disposed of issuing the following modifications to the order of the Central Administrative Tribunal :



The age limit prescribed as per Circular Nos.E (NG) II-99/CL/19 dated 28.2.2001 and E (NG) II-99/CL/19 dated 20.9.2001 will not be applicable to the casual labourers, who have completed 360 days' service. Quashing of the above said circulars is set aside. Even though the age limit is not applicable to absorption, other stipulations in the Rules like medical fitness, etc. can be insisted by the Railways.

W.P.(C) Nos.3246/2006 & 26308/2007

These writ petitions arise out of the dispute regarding absorption of casual labourers in Palakkad Division. The point that arises for decision in these writ petitions is also identical to the point considered in the above writ petitions, which we have already disposed of. Therefore, it is ordered that the directions issued in W.P.(C) No.16330/06 and connected cases will govern these cases also. No costs.

2. The case of the applicant in this O.A is that he alone has been discriminated in the matter of referring him to medical board as a pre-condition for absorbing him in the regular Group D service. The applicant has also expressed his apprehension that he was not being referred to the Railway Board because the respondents have not accepted the Annexure A-1 casual labour service cards in which it has been recorded that he has got 824 days of casual labour service.

3. I have heard Mrs.Rejitha on behalf of Mr.T.C.Govindaswamy for the applicant and Mr.Varghese on behalf of Mr.Thomas Mathew Nellimoottil for the respondents. To my mind, the dispute in this case is only with regard to the number of days put in by the applicant as a casual labourer to entitle him to be absorbed as a Group D employee on regular basis. I, therefore, direct the respondents to verify the Annexure A-1 casual labour service cards produced by the applicant along with this O.A with reference to the records maintained by them and if it is found that the applicant has also put in more than 360 days of casual labour service and the number of days of

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casual service was the only reason for his non-absorption, the respondents shall consider the applicant also at par with other casual labourers who have filed O.A.614/06 before this Tribunal. The aforesaid exercise shall be completed by the respondents within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 6th day of May 2008)


GEORGE PARACKEN
JUDICIAL MEMBER

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