

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 305 OF 2008

Friday, this the 6th day of February, 2009

CORAM:

HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

A.Raghukumar
Retrenched Casual Labourer
Southern Railway
Trivandrum Division
Residing at Karai Veedu, Vizhunam Ambalam PO
Kanya Kumari District

(By Advocate Mr. TCG Swamy)

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
Trivandrum Division,
Trivandrum

(By Advocate Thomas Mathew Nellimoottil)

The application having been heard on 06.02.2009, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE K.THANKAPPAN - JUDICIAL MEMBER

The applicant a retrenched Casual Labour of the Southern Railway, Trivandrum Division approached this Tribunal under Section 19 of the Administrative Tribunal's Act, 1985 with the following prayers:-

(i) *Declare that the refusal on the part of the respondents to consider and absorb the applicant as a Group 'D' employee (Trackman) in preference to his juniors in the list of retrenched casual labourers is arbitrary, discriminatory and unconstitutional.*

(ii) *Direct the respondents to consider and absorb the applicant as Group 'D' employee (Trackman) with all consequential benefits of such absorption from the date of absorption of the applicant's juniors, including arrears of pay and allowances thereof.*

2. The case of the applicant as narrated in the Original application is that he has been appointed as a Casual Labour by the Inspector of Works (Construction), Nagercoil from 07.03.1979 onwards and the applicant retrenched subsequently. However, as per the provisions laid down by the Apex Court reported in AIR 1985 2 SCC 648, *Inder Pal Yadav & Ors vs. Union of India*, the matter has to be considered by the Railway Board for absorption of the applicant alongwith similarly placed persons in the service of Railways. The Apex Court had directed the Railway authorities to prepare a list of retrenched casual employees basing on their period of work and those who have completed 360 days are entitled to be included in the Live list as and when vacancies are available in the Department. However, subsequent to the above judgment of the Apex Court, the Department had published a live list of retrenched Casual Labourers and the applicant was shown at Sl.No. 2298 in the said list. The applicant is having an experience of 392 days as per the work charge and work report kept by the Railway Board. Since the applicant has been overlooked by some of his juniors on absorption of their service, the applicant approached this Tribunal with the above prayers. The OA has been admitted and notice was also ordered. Reply statement has been filed for and on behalf of respondents. On receipt of the reply



statement, rejoinder has also been filed on behalf of the applicant reiterating the claim of the applicant in the light of judgment in Inder Pal Yadav & Ors vs. Union of India of the Apex Court. An additional reply statement has also been filed.

3. Today, this Tribunal heard the matter in detail. The learned counsel appearing for the applicant, Mr.TCG Swamy, had taken two grounds before this Tribunal for consideration. Firstly, it is submitted that the applicant is having more than 360 days, the days fixed by the Apex Court and he is entitled for absorption in the service. It is also contented by the counsel appearing for the applicant that the reason for his non inclusion or non absorption in the service is that he is over-aged. In this context, learned counsel for applicant invited the attention of this Tribunal the order in OA No. 271/06 and connected cases as well as the judgement of Hon'ble High Court of Kerala in Writ Petition W.P(C) No.2177/07 and submitted that the order of this Tribunal has been confirmed with regard to the age bar which has now been objected by the Department. Resisting this contention relying on the reply statement and additional reply statement, counsel appearing for the respondents, Mr.Thomas Mathew Nellimoottil had contended that the applicant is over-aged and the Apex Court has not considered the aspect of age bar. The question of consideration of absorption of the applicant is not correct. However, the counsel for respondents submits that similar cases have been considered by this Tribunal and the applicant is not entitled for immediate absorption in the service as he has to wait till his turn comes.



4. In the light of the contentions raised by the counsel on either side and relying on the documents produced, the question to be considered is whether the applicant is entitled for absorption. Admittedly, the applicant has been engaged by the Department from 07.03.1979 onwards and subsequently retrenched. Such matters have already been considered by the Apex Court in the judgment reported in **1985 SCC (L&S) 526 (Inder Pal Yadav & Ors vs. Union of India)**. In the above judgment the Apex Court had taken the view that those who are having the experience of 360 days per year or above, are entitled to be absorbed in the regular service and the Department has to draw a list of eligible candidates. In the light of the above judgment, the Department has already prepared a list of eligible candidates and the applicant is shown at Sl.No.2298. If so, the applicant is entitled for absorption in the service.

5. The next question with regard to the objection taken by the respondents is that as the applicant is over-aged he shall not be absorbed in the service. When this question has come up before this Tribunal in OA 271/06 and connected cases, this Tribunal had taken a view that the age is not a bar for such absorption. But that matter was taken up by the respondents before Hon'ble High Court of Kerala in W.P.(C) No. 21777/07 and connected W.P(C)s and the Hon'ble High Court vide its judgment dated 29.11.2007 held as follows:-

" 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 28.02.2001 and E(NG) II-99/CL/19 dated 20.09.2001 will not be applicable to the casual labourers, who have completed 360 days' service. Quashing of the above said circulars is set

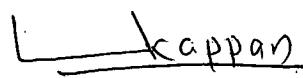


aside. Even though the age limit is not applicable to absorption, other stipulations in the Rules like medical fitness etc. can be insisted by the Railways."

6.. In the light of the principle laid down by the Apex Court, this Tribunal is of the view that the Original Application deserves to be allowed. Accordingly, this Original Application **succeeds**. The respondents are directed to reconsider the case of the applicant and shall pass appropriate orders within 60 days from the receipt of a copy of this order subject to fulfillment of other conditions.

6. No order as to costs.

Dated, the 6th February, 2009.


JUSTICE K.THANKAPPAN
JUDICIAL MEMBER

VS