

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.32/04

Friday this the 4th day of February 2005

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

T.Sankaran,
S/o.Thanu Pillai,
Ex-Casual Labourers,
Southern Railway, Trivandrum Division,
Ezhusattu Pathu, Kovalam 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 Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum - 14.
3. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum - 14.

Respondents

(By Advocate Mr.Sunil Jose,ACGSC)

This application having been heard on 4th February 2005
the Tribunal on the same day delivered the following :

O R D E R

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

The applicant has filed this application challenging Annexure A-1 order dated 13.11.2003 by which his claim for absorption against Group D posts has been rejected on the ground that he had crossed the upper age limit of 43 years prescribed for OBC as on the cut off date of 1.1.2003.

2. The undisputed facts of the case are as follows :- The applicant a member of OBC is a post 1.1.1981 retrenched casual labourer having more than 980 days of casual service and placed at Serial No.1700 in the merged seniority list of retrenched


casual labourers prepared for the purpose of future engagement/absorption. He was by Annexure A-2 letter dated 16.9.1998 called upon to appear in the Office of the Sr.D.P.O., Trivandrum along with original Casual Labour Card, Date of Birth Certificate and Community Certificate for being considered for appointment against Group D posts of Gangman in the Division. Although he appeared on 28.9.1998 he did not produce the original Casual Labour Card as the same was not available with him. Therefore he was again called upon to be present with the testimonials by letter dated 3.12.1998. In response to the said letter the applicant submitted in his letter dated 22.3.1999 that his original Casual Labour Card having been lost he had produced a photo copy and his case might be considered accepting the photocopy, if necessary by counter checking his thumb impression with the LTI Register. The applicant was again called upon by letter dated 6.11.2000 to produce attested copy of School Certificate, attested copy of Ration Card containing all particulars. He complied with this direction but was informed by letter dated 8.2.2001 that there was discrepancies in the address in the Ration Card as also in the records in the Construction Organisation. The applicant explained the same in his letter dated 11.2.2001. Finding that his case was still pending he submitted a reminder. The applicant was again asked by letter dated 2.4.2001 to explain the variation in the address. He was by letter dated 26.7.2001 called upon to produce a sworn affidavit. This direction the applicant complied with on 6.8.2001 by producing Annexure A-9 Affidavit. Since his case was still pending the applicant submitted Annexure A-11 representation. Finding no response the applicant filed O.A.750/03 which was disposed of with a direction to the 3rd

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respondent to consider and dispose of the representation. It was in response to this direction that the impugned order has been issued. It has been stated in the impugned order that from the records it was seen that his name had been included in the merged seniority list at Serial No.1700 that he had put in 989 days of casual service on the date of his retrenchment and that by the time he furnished the affidavit dated 6.8.2001 he had crossed the upper age limit of 43 years as on 1.1.2003 for engagement against the vacancies. Aggrieved by that the applicant has filed this application seeking to set aside the impugned order Annexure A-1, for a declaration that he is entitled to re-engagement/absorption in preference to persons having lesser number of casual service than the applicant and those who ranked below Serial No.1700 in the Live Register and for a direction to the respondents to consider the applicant for re-engagement on par with persons ranking below Serial No.1700 against the vacancies for the years 1998 to 2002 with consequential benefits.

3. The respondents have filed a reply statement contending that the applicant having crossed the upper age limit and having not produced the original Casual Labour Card is not entitled for the reliefs.


4. Shri.T.C.Govindaswamy, learned counsel of the applicant submitted that when the applicant in response to Annexure A-2 letter appeared and produced the photo copy of the Casual Labour Card particulars stating that the original Casual Labour Card was not available with him the respondents having had no doubt



regarding the identity of the applicant and his placement in the Live Register, should have screened the applicant and absorbed him on a Group D posts in his turn without insisting on the production of further materials, for, production of further materials would have become necessary only if there had been any doubt regarding either identity of the applicant or regarding the number of days of service put by him.

5. Learned counsel of the respondents, on the other hand, argued that since the Railway Administration has to verify the details regarding the retrenched casual labourers, the rule prescribed that the original Casual Labour Card should be produced at the time of screening and since the applicant did not do that and as the delay in production of Sworn Affidavit was only attributable to the applicant, the applicant lost his chance of re-engagement at the appropriate time and at this distance of time after he crossed the upper age limit he should not be considered.

6. Considering the factual situation in this case especially when the fact that the applicant a retrenched casual labour with 989 days of casual service have been undisputedly placed in the Live Register of the retrenched casual labourers at Serial No.1700 the mere fact that the applicant's original Casual Labour Card was lost should not have stood in the way of applicant being screened and absorbed immediately on his appearing before the Divisional Personnel Officer with photo copy of the Casual Labour Service particulars. Since the respondents had no doubt



regarding the identity of the applicant if for the purpose of completing the records a sworn affidavit was needed the applicant should have been immediately required to produce it and action taken without delay. The right of the applicant is not to be considered as on 1.1.2003 but as on the date when he and similarly situated others were called to report for screening. Since the Serial No. of the applicant in the merged list of retrenched casual labourers is at 1700 the applicant should have been absorbed against a vacancy which fell in his turn before the appointment of any persons below 1700. Now since there is no case that persons below 1700 were not appointed till 2001 and the respondents having now been satisfied about the identity of the applicant as is seen from the impugned order the respondents are bound to consider the applicant for re-engagement against an existing vacancy of Gangman/Trackman. The loss of the original Casual Labour Card while its photocopy is available and it tallies with the entries in Live Register and the identity of the applicant is not in serious doubt the respondents should have accepted the photocopy as genuine and considered the applicant for screening earlier.

7. In the result, the application is disposed of directing the respondents to consider the absorption of the applicant against an existing vacancy of Gangman/Trackman without insisting on production of original Casual Labour Card and if he is found otherwise not unsuitable to appoint him and to fix his pay and seniority reckoning his position at Serial No.1700 in the merged seniority list of casual labourers. The above directions shall

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be complied with and order accordingly issued within a period of three months from the date of receipt of a copy of this order.
No order as to costs.

(Dated the 4th day of February 2005)



A.V. HARIDASAN
VICE CHAIRMAN

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