

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 329 OF 2010

Thursday, this the 4th day of November, 2010

CORAM:

HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Biju Kumar
Technician (Mechanic Gr.II)/Carriage & Wagon Office
Southern Railway/Trivandrum Railway Station/
Trivandrum
Residing at Sree Vishakham, Kallupalam
Edaicode Post
Kanyakumari District

(By Advocate Mr. TCG Swamy)

VERSUS

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

(By Advocate Mr.Thomas Mathew Nellimoottil)

The application having been heard on 04.11.2010, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR.JUSTICE K.THANKAPPAN. JUDICIAL MEMBER

The applicant has filed this OA for a declaration that he is entitled to have been absorbed in service on completion of six months training in the post in which he was appointed as Technician with all consequential benefits. The applicant is a ITI holder and he has applied to the post under the compassionate appointment scheme as his father died while he was in service. Consequent to the screening of the application the applicant was

appointed as Technician. As per the relevant Recruitment Rules meant for appointment of Skilled Artisans like the applicant, course completed Act Apprentices, ITI qualified and matriculation were eligible to apply. The applicant who considered and appointed by Annexure A3 order dated 12.05.2003. Since Annexure A3 appointment order contains a condition that his appointment shall be subject to certain undertakings that he has to undergo a training for three year. His service has not been regularised on completion of six months training but department waited upto covering of three years. As per the relevant Recruitment Rules, viz. Rule 159 and subsequent amendment brought to the said Rule as contained Indian Railways Establishment Manual Volume I, a candidate having Act Apprentice Course and ITI passed in the relevant trade from open market can be appointed directly. Since the appointment of the applicant is in the direct recruitment quota, though under the compassionate scheme the condition contained in Annexure A3 that the applicant has to undergo three years training is irregular and is not sustainable in the light of Recruitment Rules. Hence applicant has filed this OA with the prayer as stated above.

2. The OA has been admitted by the Tribunal and notice ordered to the respondents. In pursuance to the notice ordered by this Tribunal a reply statement has been filed on behalf of the respondents. It is the stand taken in the reply statement that as per Annexure A3 appointment order the applicant must undergo three years training and the relevant rules pointed out by the counsel for the applicant in Rule 159 namely, with regards to the training, even if he is appointed under the compassionate appointment scheme shall not be insisted to avoid with three years training. Further it is stated that the applicant has already accepted the conditions in Annexure

A-3 and he cannot estop from that condition which he has already accepted. It is further submitted in the reply statement that the Rule prescribes ITI in the relevant trade may not require for training for three years if the applicant is not having ITI in the relevant trade he should undergo three years training. On receipt of the reply statement a rejoinder has been filed on behalf of the applicant reiterating the averments in the OA and as far as the training is concerned for ITI holders only six months training is necessary even if any conditions attached in the appointment order is not binding on the applicant.

3. We have heard Mr.TCG Swamy, learned counsel for applicant and Mr.Thomas Mathew Nellimoottil, counsel for respondent. Counsel insists that as per Rule 159 of the relevant rules applicable for skilled Artisans the qualification fixed for Direct Recruitment is Course Completed Act Apprentice, ITI holder in relevant trade and matriculation before the amendment were brought to that said Rule As per Annexure A-2, namely before 28.01.2000. If so whether the appointment is under compassionate ground or not as the applicant was appointed as direct recruitee, the applicant is only liable to complete six months training as he is having ITI certificate. Counsel further submits that the applicant is not having the relevant trade as the applicant was appointed as Technician and the ITI certificate which he had, the applicant can only be insisted for training for six months and not three years. Hence the counsel submits that the applicant's service has to be regularised as and when he has completed six months training viz on 13.11.2003. To meet the arguments Counsel for respondents submits that as the applicant was appointed on compassionate ground, he has to obey the conditions on which he has



appointed and if so the applicant has to undergo three years training. Further the counsel submits that the applicant is not having ITI certificate in the relevant trade and as his educational qualification is considered only matriculation, he has to undergo three years training.

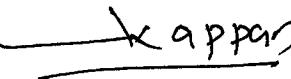
4. On considering the argument of the counsel for the parties and on perusing the relevant rules the appointment of the Skilled Artisans, it is to be held that the qualification fixed for appointment of Technician, viz. Skilled Artisans, Course Completed Act Apprentice, ITI in relevant trade and matriculation is fixed as basic qualification. However it is seen that matriculation the basic qualification has already been taken away by the amendment brought to the Rule in 2001 itself. Apart from that the applicant was appointed as Technician and he was allowed to work in the Skilled Artisans Group, his appointment can only be on the basis of holding the ITI certificate. In the above circumstances the conditions if any prescribed in Annexure A3 against the relevant Recruitment Rule has no stand in the eye of law. It is an admitted fact that the applicant has been appointed as a Skilled Artisan, a Technician and Annexure A-3 does not show his basic qualification is taken as Metric but he was appointed as Technician on the basis of certificate of ITI which he has. The amendment brought to the rule regarding qualification of matriculation is a basic qualification for Apprentice would also clear that appointment should have been on the basis of ITI certificate which the applicant has. The insistence of the Department that he should undergo three years training is not correct. And apart from that the same question has already been covered by an order of this Tribunal in OA 154/09. The said order has also become final. On the reasons stated in the said OA, this OA is allowed declaring that the applicant has to



undergo training for only six months and he is entitled for regularization with effect from the date of completion of six months training,. Ordered accordingly. No order as to costs.

Dated, the 4th November, 2010.]


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE K.THANKAPPAN
JUDICIAL MEMBER

vs