

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.349/08

Wednesday this the 4th day of February 2009

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

1. V.Kumaradhas,
S/o.Velayudhan,
Ex-Casual Labourer,
Southern Railway, Trivandrum Division.
Residing at Uthirampalli Vilai Veedu,
Keezhkulam P.O., Vilavancode Taluk,
Kanyakumari District.
2. A.Selvaraj,
S/o.Appavu Nadar,
Ex-Casual Labourer,
Southern Railway, Trivandrum Division.
Residing at Saralvilai Veedu, Keezhkulam,
Vilavancode Taluk, Kanyakumari District.
3. P.Thanka Sundaram,
S/o.Ponnu Nadar,
Ex-Casual Labourer,
Southern Railway, Trivandrum Division.
Residing at Villaivilai, Keezhkulam,
Vilavancode Taluk, Kanyakumari District.Applicants

(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 – 14.
3. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14.Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 4th February 2009 the Tribunal
on the same day delivered the following :-

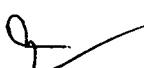


ORDER**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER**

The applicants in this case are retrenched casual labourers of Southern Railway, Trivandrum Division having their names registered at Sl.Nos.2072, 2028 and 2044 respectively in the casual labour live register. They were denied absorption as regular Group 'D' employee on the ground that they have crossed the prescribed age limit. They have further submitted that the issue regarding age limit for the purpose of absorption of retrenched casual labourer was considered by this Tribunal in O.A.271/06 and connected cases decided on 14.3.07. The operative part of the order of this Tribunal is as under :-

"35. In the result, I quash Ministry of Railways Letter No E (NG)-II/99/CL/19 dated 28.2.2001 and the letter of even No dated 20.9.2001 to the extent it relates to the retrenched casual labour placed in the merged seniority list tracing its origin from the directions in Inder Pal Yadav's case and as prepared consequent to this Tribunal's order in OA 1706/94 and direct that the applicants in these OAs be considered for regular absorption in the existing vacancies having regard to the seniority in the above mentioned merged list and without applying any age limit subject to medical fitness and other conditions for such absorption being fulfilled. The appointments made so far shall not be disturbed. The respondents shall also endeavour to exhaust this list as early as possible while filling up future vacancies so that this category are not again driven to knock at the doors of the court for justice. Appropriate orders shall be passed and communicated to the applicants within a period of four months. OAs are allowed. No costs."

2. The aforesaid order of this Tribunal was challenged before the Hon'ble High Court of Kerala in W.P.(C) No.3246/07 and connected cases and by a common judgment dated 29.11.2007 the Hon'ble High Court, after having gone extensively in the matter, held that 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. The Hon'ble High Court has, therefore, quashed and set aside the Circulars but it was also held that 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.

3. Applicants in this OA submitted that they are similarly placed persons but they have not been absorbed in spite of their representations Annexure A-4 to Annexure A-6 dated 23.6.2007, 18.7.2007 & 22.7.2007 respectively. According to them, they have not been absorbed as Group 'D' employees probably on the ground that they were not the contesting parties in O.A.271/06 (supra) and W.P.(C) No.3246/07 and connected cases (supra) and other similar cases decided by this Tribunal as well as the Hon'ble High Court of Kerala. Shri.T.C.Govindaswamy, counsel for the applicant, has also brought to my notice that in O.A.491/07 – M.Wilson Vs. Union of India, this Tribunal has considered the same issue and passed the following orders following the judgment of the Hon'ble High Court in W.P. (C) No.3246/07 dated 29.11.2007 (supra) :-

"2. The crucial issue is whether the concerned applicant is having minimum service of 360 days at his credit. As a matter of fact, if he has more than 360 days of service to his credit, upper age limit will not be considered as a factor disentitling him to get the benefit otherwise due. Therefore, it is submitted by the learned counsel for the respondents that if a representation and substantive documents is made available, the claim would be considered within three months from the date of receipt of a copy of representation if he makes it within 14 days from today.

3. Needless to say that the consideration as above has to be made in the light of the judgements referred to above."

4. Respondents have filed their reply statement. They have confirmed that the applicants were not absorbed as regular Group 'D' because they were over aged.

5. I have heard Shri.T.C.Govindaswamy for the applicants and Shri.Thomas Mathew Nellimoottil for the respondents. The contention of the respondents that the applicants in this case are over aged will not survive any more in view of the order of this Tribunal in O.A.271/06 and connected cases which has been upheld by the Hon'ble High Court in W.P. (C) No.3246/07 and connected cases.

6. In the above facts and circumstances of the case, this OA is allowed. Respondents are directed to consider the case of the applicants ignoring the fact that they are over aged and absorb them as Group 'D' employees in Trivandrum Division of the Southern Railway provided they satisfy other conditions as stipulated in W.P.(C) No.3246/07 and connected cases dated 29.11.2007. Respondents shall pass necessary orders in favour of the applicants and communicate the same to them positively 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 4th day of February 2009)



GEORGE PARACKEN
JUDICIAL MEMBER

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