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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 803/2005
alongwith
O.As 784/05, 794/05, 795/05, 805/05 and 36/06

Friday, this the 16th day of February, 2007

1. O.A. NO. 803/2005

M. Rengaraj, S/o. Masimalai,
Ex-Casual Labourer,
Palghat Division, Southern Railway
Residing at Pallatheru,
Panchamadevi P.O. KARUR.

... Applicant.

(By Advocate Mr. TC 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, Palghat Division, PALGHAT.
3. The Senior Divisional Personnel Officer, Southern Railway, Palghat Division, PALGHAT. ... Respondents.

(By Advocate Mrs. Sumathi Dandapani, Sr. & Ms. P.K. Nandini)

2. O.A. NO. 784/2005

P. Muthuswamy, S/o. Perlaswamy,
Ex. Casual Labour, Southern Railway,
Palghat Division, Palghat, Residing at
63-A, Pullyur P.O., Amaravati Nagar,
KARUR.

... Applicant.

(By Advocate Mr. TC Govindaswamy)

v e r s u s

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, Palghat Division, PALGHAT.
3. The Senior Divisional Personnel Officer, Southern Railway, Palghat Division, PALGHAT. ... Respondents.

(By Advocate Mrs. Sumathi Dandapani, Sr. & Ms. P.K. Nandini)

3. O.A. NO. 794 of 2005

P. Krishnan, S/o. Palani Yadavar,
Ex-Casual Labourer,
Southern Railway, Palghat Division,
Residing at Edayar Palayam, Vedissipalayam,
Karur, Trichy District.

.. Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

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, Palghat Division, PALGHAT.
3. The Senior Divisional Personnel Officer, Southern Railway, Palghat Division, PALGHAT. ... Respondents.

(By Advocate Mrs. Sumathi Dandapani, Sr. & Ms. P.K. Nandini)

4. O.A. NO. 795/2005

R. Ponnusamy, S/o. S. Ramaswamy,
Ex-Casual Labour, Southern Railway,
Palghat Division, Palghat,
Residing at 5A Chinnappall Street,
KARUR.

... 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, Palghat Division, PALGHAT
3. The Senior Divisional Personnel Officer, Southern Railway, Palghat Division, PALGHAT. ... Respondents.

(By Advocate Mrs. Sumathi Dandapani, Sr. & Ms. P.K. Nandini)

5. O.A. NO. 805/2005

P. Kaliapan, S/o. Palaniappan,
Ex-Casual Labourer,
Southern Railway, Palghat Division,
Residing at Veerarakyam R.S. & P.O.,
Krishnanarayananapuram, KARUR Dist.

... 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, Palghat Division,
PALGHAT

3. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division, PALGHAT. ... Respondents.

(By Advocate Mrs. Sumathi Dandapani, Sr. & Ms. P.K. Nandini)

6. O.A. NO. 36/2006

M. Andiappan, S/o. Malayan,
Ex-Casual Labourer,
Southern Railway, Palghat Division,
Residing at Keelavettikatty, Lalapet Post,
Krishnanarayapuram Taluk, KARUR Taluk ... 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, Palghat Division,
PALGHAT

3. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division, PALGHAT. ... Respondents.

(By Advocate Mrs. Sumathi Dandapani, Sr. & Ms. P.K. Nandini)

These Original Applications having been heard on 07.02.07, this
Tribunal on 16.02.07, delivered the following :

ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

As common issue is involved in all these cases, this common order is
passed.

2. The Issue involved in these cases is as to whether the applicants are entitled to be re-engaged, followed by absorption by the Railway respondents on the basis of their claim that they had earlier worked on casual basis.

3. The Apex Court in the case of *Inder Pal Yadav v. Union of India*, (1985) 2 SCC 648, held as under:-

6. To avoid violation of Article 14, the scientific and equitable way of implementing the scheme is for the Railway Administration to prepare a list of project casual labour with reference to each division of each railway and then start absorbing those with the longest service. If in the process any adjustments are necessary, the same must be done. In giving this direction, we are considerably influenced by the statutory recognition of a principle well known in Industrial jurisprudence that the men with longest service shall have priority over those who have joined later on.

4. Incorporating the directions of the Court, the Railway Board issued a circular to the General Managers of all Indian Railways, para 5.1 of which is relevant and is as follows:-

5. 1. As a result of such deliberations, the Ministry of Railways have now decided in principle that casual labour employed on projects (also known as Project Casual Labour) may be treated as temporary on completion of 360 days of continuous employment. The Ministry have decided further as under:

(a) These orders will cover:

- (i) Casual labour on projects who were in service as on January 1, 1981; and
- (ii) Casual labour on projects, who, though not in service on January 1, 1981, had been in service on

Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or have since completed or will complete the said prescribed period of continuous employment on re-engagement after January 1, 1981.

(b) The decision should be implemented in a phased manner according to the schedule given below:

Length of service (i.e. continuous employment) Date from which may be treated as temporary -

- (i) Those who have completed five years 1-1-1981; 1.1.1981
- (ii) Those who have completed three years but less than five years of service as on 1-1-1981; 1-1-1982
- (iii) Those who have completed 360 days but less than three years of service as on 1-1-1981; 1-1-1983
- (iv) Those who complete 360 days after 1-1-1981; 1.1.1984 or the date on which 360 days are completed whichever is late.

5. Some individuals claimed before the Apex Court that they were also entitled to the benefits of the modified scheme and prayed that they should be forthwith taken back into employment. The Railway Administration admitted some of them to be entitled while in respect of others it contended that they were not entitled to the benefits of the scheme as they were not in service on January 1, 1981 having been retrenched sometime prior to that date. The contention of the Railway Administration was held untenable by the Apex Court in view of the express provision in para 5.1.(a)(ii) that these orders will cover casual labour on projects, who, *though not in service on January 1, 1981, had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or have since completed or will complete the said prescribed period of continuous employment*

on re-engagement after January 1, 1981. However, appreciating the difficulty of the Administration the Apex Court directed that all persons who claimed the benefits of the scheme on the ground that they had been retrenched before January 1, 1981 should submit their claims to the Administration before March 31, 1987. In which event, the Administration would then consider the genuineness of the claims and process them accordingly. (*Dakshin Rly. Employees' Union v. G.M., S. Rly.*, (1987) 1 SCC 677).

6. Thus, on the basis of the data available with the Railways in respect of post 01.01.1981 casual labourers and on receipt of such date from pre-01.01.1981 retrenched casual labourers, the Railways prepared separate lists and published the same on 13.02.1995. However, these lists were merged and a single list was published on 17.09.1996. By an order of the Tribunal in OA No. 1706/94, any reengagement was only in accordance with the seniority list as contained in the aforesaid merged register. The applicants in these OAs are retrenched casual labourers and their claim is that they should also be given the benefit of re-engagement followed by absorption. Admittedly, applicant in OA No. 795/05 (Shri R. Ponnusamy) and applicant in O.A. No. 805/05 (Shri P. Kallappan) were pre 01-01-1981 retrenched casual labourers and they had not applied in accordance with the Apex Court's direction before 31-03-1987. Applicants in the rest of the OAs are post 1981 retrenched casual labourers in respect of whom, the responsibility of excavating the data of service and retrenchment was that of the Railways.

7. In 2003, the railways had prescribed age limit for re-engagement and absorption as per which the age limit for General Candidates was 40, while that of OBC candidates 43 and SC/STs 45 years of age.

8. As the applicants could not hear anything from the Railways they had approached and since these individuals were not re-engaged, they have approached this Tribunal.

Now the personal details of each case:

| OA No. | Name | Within age? | Period of Engagement | Remarks |
|----------|---------------|-------------|-----------------------------------|--------------------------------------------|
| 784/2005 | P. Muthuswamy | Yes | 1978, 82, 85 & 86. Total 363 days | Copy of Casual Lbr. Service Card produced. |
| 794/2005 | P. Krishnan | Yes | 1983 to 85, 334 days | Authentication made by PWI |
| 803/2005 | M. Rengaraj | Yes | 1983-84 - 226 days | -do- |
| 36/2006 | M. Andiappan | Yes | 1978, 79, 81 & 82 - 421 days | Copy of Labour Service card produced. |
| 805/05 | P. Kaliappan | Yes | 1978 - 90 days | Pre 1-1-1981 retrenched C.L. |
| 795/05 | R. Ponnusamy | Yes | 1978 - 136.5 days | -do- |

9. Respondents have contended that all these cases are hopelessly time barred and relying on a very recent order dated 17-01-2007 in OA No. 29/07, the respondents pray for dismissal of the O.As. The applicant in the said O.A. was in fact a post 01-01-1981 retrenched casual labourer. And, the

responsibility of verifying the details of past service was thoroughly with the Railways. Yet, on account of limitation, his case was rejected. Counsel for respondents has invited the attention of the Tribunal to the decisions of the Apex Court in the case of Union of India and another vs Mohan Pal and others, (2002) 4 SCC 573 and Ratan Chandra Sammanta v. Union of India, 1993 Supp. (4) SCC 67 in support of the case of the respondents. In so far as Mohan Pal is concerned, the question was whether the scheme formulated was a one time measure or not. The issue involved in this case is different. In so far as the case of Ratan Chandra Sammanta is concerned, the Apex Court has held as under:-

6. Two questions arise, one, if the petitioners are entitled as a matter of law to re-employment and other if they have lost their right, if any, due to delay. Right of casual labourer employed in projects, to be re-employed in the Railways has been recognised both by the Railways and this Court. But unfortunately the petitioners did not take any step to enforce their claim before the Railways except sending a vague representation nor did they even care to produce any material to satisfy this Court that they were covered in the scheme framed by the Railways. It was urged by the learned counsel for petitioners that they may be permitted to produce their identity cards etc., before opposite parties who may accept or reject the same after verification. We are afraid it would be too dangerous to permit this exercise. A writ is issued by this Court in favour of a person who has some right and not for the sake of roving enquiry leaving scope for maneuvering. Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well. From the date of retrenchment if it is assumed to be correct a period of more than 15 years has expired and in case we accept the prayer of the petitioners we would be depriving a host of others who in the meantime have become eligible and are entitled to claim to be employed. We would have been persuaded to take a sympathetic view but in absence of any positive material to establish that these petitioners were in fact appointed and working as alleged by them it would not be proper exercise of discretion to direct opposite parties to verify the correctness of the statement made by the

petitioners that they were employed between 1964 to 1969 and retrenched between 1975 to 1978.

10. The above case relates to retrenchment anterior to 01-01-1981 in which case, it was for the respective individuals to approach the authorities before 31-03-1987 which the appellant in the said case failed to do. Thus, the ratio in that case is applicable to pre 01-01-1981 retrenched casual labourers and in the instant case, the same would be applicable to pre-1981 retrenched casual labourers.

11. Counsel for the applicant submitted that in so far as pre 01-01-1981 retrenched casual labourers, though it is true that they ought to have given the particulars before 31-03-1987, as they could not do the same, their case may now be considered. The applicants in these two cases have already missed the bus and hence, following the decision of the Apex Court in the case of Ratam Chandra Sammanta (*supra*) O.A. No 795/05 and 805/05 are summarily rejected.

12. As regards the other cases, a duty was cast upon the Railways to enter the details of such casual labourers in the Live Casual Labour Register but these had not been done. True, the task involved is very much appreciated and while thousands of entries are made in the register, omission of a few causes cannot but be probable. The question is whether the applicants are not at all under any responsibility to approach the authorities within some reasonable time? Counsel for the applicant submitted that such omissions may not be many. Referring to a very recent decision of this Tribunal in OA 29/07, counsel for the

respondents has submitted that on account of limitation that case was dismissed. Dismissal in that case was after recording that the applicant therein had rendered **only 134 days** of casual service. Thus, it is seen that the other case in OA No. 29/07 was rejected on account of limitation also perhaps on account of the fact that the applicant therein had rendered 134 days of casual labour service only, whereas in the cases herein, the period of service rendered ranges between 226 days to 421 days. As such, these cases deserve consideration and in view of the fact that certain documents, duly authenticated by the Railway Authorities have been filed, it is only appropriate that the Respondents consider these cases and enter their names in the Live Casual Labour Register on the basis of the seniority as prescribed and in case on verification they are found eligible, further action for re-engagement and later on for absorption be taken. Action be initiated in this regard within two months of the receipt of the copy of this order and the applicants informed of the extent of action taken by then.

10. Thus, OA Nos. 795/05 and 805/05 are dismissed and OAs 784/05, 794/05, 803/05 and 36/05 are disposed of with the above directions.

11. No costs.

(Dated, the 16th February, 2007)

Dr. K B S RAJAN
JUDICIAL MEMBER

CVR