

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.37/2003.

Wednesday this the 31st day of March 2004.

CORAM:

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

J.Rajan,
Peringottukuzhi Puthenveedu,
Pallichal, Nemom P.O.,
Thiruvananthapuram.

Applicant

(By Advocate Shri.P.K.Madhusoodhanan)

Vs.

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. Railway Board, rep. by its Chairman,
Rail Bhavan, New Delhi. Respondents


(By Advocate Shri Thomas Mathew Nellimoottil)

The application having been heard on 31st March 2004,
the Tribunal on the same day delivered the following:

O R D E R (Oral)

HON'BLE SHRI K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant who was initially engaged as a Project Casual Labourer on 16.12.1978 under the Permanent Way Inspector, Southern Railway, Trivandrum, continued till 27.1.1981 and retrenched while he had 947 1/2 days of casual service by Annexures A1/A2. The applicant submitted a representation on 3.8.1996 requesting to engage and absorb him in preference to his juniors. While so, he came across the memorandum dated 13.2.97 issued by the 2nd respondent empaneling sixty eight persons out of which serial Nos. 54 and below are persons with lesser number of days of service than the applicant and they were empaneled against vacancies as on 31.12.1996. In the circumstances, he has



filed O.A.321/97 before this Tribunal and the O.A. was closed on 7.9.1999 giving an undertaking to consider the case of the applicant. After prolonged deliberations the applicant approached the official under the 2nd respondent requesting him to reengage him for casual work in the Trivandrum Division. They have not redressed his grievance and the applicant had caused a lawyer notice to the 2nd respondent on 29.9.2002 which is Annexure A-6 requesting him to re-engage him as casual labourer forthwith and absorb him as per his turn. In reply to A-6 he got A-7 order dated 19.11.2002 stating that his absorption would be considered in his turn. It has not yet done. Aggrieved by the inaction on the part of the respondents he has filed this O.A. seeking the following reliefs:

- a) Issue necessary directions to the 2nd respondent to consider the applicant for re-engagement as Casual Labourer in preference to juniors and freshers in the Trivandrum Division of the Southern Railway and grant him work and wages in accordance with law;
- b) Issue necessary directions to the 2nd respondent to consider the applicant for absorption in group 'D' posts in the existing vacancies in Trivandrum Division of the Southern Railway forthwith and grant him absorption/appointment as group 'D' employee in accordance with law.
- c) set aside Annexure-A7;
- d) Costs;
- e) grant such other and further reliefs as this Hon'ble Tribunal deems fit and proper;
- f) set aside Annexure A-8 in so far as it prescribes upper age limit of 43 years in the case of OBC candidates/Ex-casual Labourers and such other upper age prescriptions therein for absorption of OBC ex-casual labourers in Group 'D' posts.

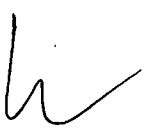
2. The respondents have filed a detailed reply statement contending that Annexure A-7 is a letter addressed to the counsel in reply to A-6 which is not marked to the applicant and therefore, he is not competent to challenge A-7 and in furtherance of such contention the O.A. was amended. It is



further submitted that his absorption would be considered subject to the conditions. The applicant did not report to the office in respect of R-1 notification dated 24.4.2003 and therefore, he could not be considered. In the absence of the applicant's action the respondents cannot be held responsible. The seniority list of the retrenched employees has been made on the basis of the Hon'ble Supreme Court's decision in Inder Pal Yadav 's case and in furtherance of the O.A.1706/94 and the seniority was finalised in accordance with the merged seniority list. The applicant's name has been included in the appropriate place based on the total number of days of service that he rendered.

3. The applicant has filed a rejoinder to the reply contending that since no reliefs has been sought against the juniors, they have not been impleaded. The applicant has not come across Annexure R-1, but all necessary documents have been produced at the appropriate time and in spite of that fact he was not considered.

4. The respondents have filed an additional reply statement in which they have produced R-5 Circular of the Railway Board and contended that the Ex-casual labourer who had put in minimum 120 days casual service, whether continuous or in broken spells and were initially engaged as casual labour within the prescribed age limit of 28 years for general candidates and 33 years for SC/ST candidates, would be given age relaxation upto to the upper age limit of 40 years in the case of general candidates, 43 years in the case of OBCs and 45 years in the case of SC/ST candidates. Other provisions for their absorption in Group'D' will remain unaltered. As the applicant is overaged, he is not entitled to be considered for filling up the vacancies of Trackman.



5. The applicant has filed an additional rejoinder contending that the age limit of 43 years mentioned in Annexure R-5 is unsustainable and there is no nexus between the basis of classification by prescribing upper age limit for OBC as 43 years and the object sought to be achieved by that. During the year 1998, when Annexures-A3 and A4 were issued retrenched Casual Labourers above 50 years of age were also absorbed as Gangman. Prescribing of upper age limit herein is violative of Article 14 of the Constitution of India, arbitrary and unreasonable.

6. The respondents have filed an additional reply statement to the additional rejoinder and produced Annexure R-6 as reply to R-1 wherein the applicant has stated that he has reported the office with relevant documents called for. The respondents 1 to 3 has filed another reply statement to the amended O.A. reiterating the same points and stressing the age restrictions placed as per the orders of the Railway Board.


7. I have heard Shri P.K.Madhusoodhanan and Shri Thomas Mathew Nellimoottil for the respondents. Learned counsel for the applicant argued that the very reason for including the Project Casual Labour and fixity of employees to such employment was on the basis of the celebrated decision of the Hon'ble Supreme Court in Inder Pal Yadav's case and no age restriction whatsoever was raised by the Hon'ble Apex Court in granting relief to such employees and therefore, Annexure R-5 which is standing in the way, has no nexes with the objectives of which it is made. The vacancy for which this applicant along with others were considered as early as in 1998 and Annexure R-5 has been notified only in the year 2001. His juniors also has been granted the relief and therefore, he is entitled to get the relief.



8. Learned counsel for the respondents persuasively argued that the reason for rejection is in furtherance of the instructions of the Railway Board's Annexure R-5. Such restriction has been there even before this notification and therefore the respondents cannot be faulted in not granting the relief. A separate affidavit has been filed by the respondents and submitted that those casual labourers who has been absorbed even after crossing 45 years for the reason that they obtained court orders and the respondents were obliged to grant the relief. In such circumstances such employees were granted the relief which cannot be extended to the applicant.

9. I have heard the learned counsel on both parties and given due consideration to the evidence and material on record. It is an admitted fact that the applicant was working with effect from 16.12.1978 upto 1.8.1981 and has completed 947 1/2 days and thus he has come in the live register as per the directions of the Hon'ble Supreme Court. When the Project casual labourers were put at large the Hon'ble Supreme Court interfered in Inder Pal Yadav and others Vs. Union of India and others. (1985) SCC (L&S) 526). In the celebrated decision the Supreme Court has made it clear that such uncared employees must be given fixity of employment and after an elaborate deliberation the Supreme Court has directed the respondents to prepare a Live Register according to the seniority in certain conditions. The applicant is one such employee who come under that condition and seeking employment. When the matter came before this Tribunal in O.A.321/97 the respondents had undertaken that:

" It is humbly submitted that the priority number of the applicant in the merged seniority list finalised as per the directions of the Hon'ble Tribunal in Original Application No.1706/94 is 1921. From the seniority list, the retrenched casual labourers upto serial No.1877, in respect of persons belonging to other than Scheduled



Caste/Scheduled Tribe Communities have been considered for appointment and eligible persons have been appointed. It is further submitted that beyond Serial No.1877, the retrenched casual labourers those belonging to Scheduled Caste Community upto Serial No.1971 have been considered for appointment against the quota meant for them. The applicants claim for absorption is being considered in his turn subject to fulfillment of other terms and conditions governing such appointment, it is humbly submitted."

When such an undertaking for considering the applicant's case as and when his turn comes was given the vacancy position that has been considered in 1998 and the order of the Tribunal is 7.9.99. At that point of time there was age restriction according to the respondents and he has produced Railway Board's letter dated 20.4.79 wherein the age relaxation for direct recruitment to Group 'C' and 'D' posts put in subject to the age of 35 years not being existed.

10. On going through the said circular it is clear that the age relaxation upto 35 years has been granted to direct recruits and the observation of the retrenched casual labourers were not there. The relevant rule that governs the absorption of casual labourers in the Railway establishment which has been placed in paragraph 179 (xiii) (c) of Indian Railway Establishment Manual Vol.I 1985 Edition, does not prescribe any age restriction for such absorption.

11. Learned counsel for the respondents submitted that even in Annexure R-5 dated 20.9.2001 which was produced along with additional reply statement, there are two letters referred in the first paragraph which has been directed to be produced by this Court and accordingly produced. On going through the said letters I find that it is pertained to employees who are serving in the Railways and have put in three years continuous service has been granted certain relaxation to 40/45 years and finally OBC candidates were also extended the benefit. However, the



applicant's category is retrenched casual labour who has been directed to be kept in the live register by virtue of the orders of the Hon'ble Supreme Court is different from serving casual labourers and in my view is not squarely applicable. What has been stated in Annexure A-5 is the first circular which formulate absorption of ex-casual labourers borne on the supplementary casual labour register which has made only on 20.9.01. On going through the evidence and material placed on record I find that the vacancy which the applicant is aspiring for 1998 and the process has already started and his claim has been rejected on the ground that he has been overaged. Admittedly the circular R-5 dated 20.9.2001 was not in existence when the vacancies arose in 1998. When the right thing is done in right time the applicant could have been considered and engaged at that time. It is well settled position of law that "the rules/instructions will have only the prospective effect". A Board's letter cannot have its life before it is born. The birth of the Board's letter is 20.9.01. Therefore, I am of the considered view that Annexure R-5 cannot have any retrospective effect. On that count, the applicant is entitled to have the benefit and the reliefs sought for. It is settled legal position that "when a vacancy existed for a prior period the new Recruitment Rule cannot be applicable, the selection should be with respect to rules and instructions of old Recruitment Rules." The decision of the Hon'ble Supreme Court in Y.V.Rangaiah and others Vs. J.S.Sreenivasa Rao and others (1963 SCC (L&S) 382 fortify this position. Therefore, what was prevailing in 1998 when the applicant was considered for the first time for absorption, which is reiterated and assured by the respondents in the O.A.321/97. The respondents could have considered the applicant and granted the relief which is not done in this case.



12. Therefore, I am of the considered view that A-7 order rejecting his claim has not been issued in the true spirit of law and facts and therefore it is to be set aside. A-7 is set aside and I direct the respondents to consider the case of the applicant within a time frame and grant the applicant the benefit of absorption in group 'D' post untrammelled by the condition laid down in annexure R-5 regarding the age restriction, if the applicant is otherwise found eligible. This exercise shall be done within a time frame of three months from the date of receipt of a copy of this order.

13. O.A. is disposed of as above. There is no order as to costs.

Dated 31st March. 2004.



K.V.SACHIDANANDAN

JUDICIAL MEMBER