

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

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O.A. 370/93

Friday, this the 11th day of February, 1994

Shri N.Dharmadan, Judicial Member

Shri S.Kasipandian, Administrative Member

Applicants:

1. C. Sumathy,
Valiyamoolayil House,
Cherunniyoor,
Thiruvananthapuram.
2. C.Omana,
Valiyamoolayil House,
Cherunniyoor,
Thiruvananthapuram.
3. K. Sathyavathy,
Elluvila Veedu,
Vennicode P.O.,
Thiruvananthapuram.
4. K.N.Omana,
Vallukappally Tharayil,
Pullikamukku P.O.,
Mavelikara.

By Advocate Shri Ashok M.Cherian.

Respondents:

1. Divisional Personnel Officer,
Southern Railway,
Trivandrum.
2. Divisional Railway Manager,
Southern Railway,
Trivandrum.
3. Southern Railway rep. by its
General Manager,
Madras.
4. V.Anandan,
Block No.22, Harijan Colony,
Umbernadu, Mavelikara.
5. C.Purushan,
Ranjit Bhavan,
Umbernadu,
Mavelikara.

By Advocate Shri Thomas Mathew Nellimoottil (R1-3)

O R D E R

N.Dharmadan, JM

Applicants are retrenched casual labourers of the Southern Railway. All of them belong to SC community. They are aggrieved by the age restriction for re-employment in Ann.A1 Employment Notice dated 10.7.92

2. Applicants 1 & 2 were initially engaged on 6.5.74. They were retrenched on 10.10.81. Third applicant was originally engaged on 1.5.75 and retrenched on 5.12.80. Likewise, the 4th applicant was engaged on 23.10.75, but retrenched on 1.10.81. Applicants have rendered service for a total period of 2062, 2158, 1006 and 327 days respectively. According to them, after the decision of the Supreme Court in Inderpal Yadav Vs. Union of India (1985) 2 SCC 648 they are entitled to be included in the live register of casual labourer for re-engagement in accordance with their seniority and turn. Ann. A1 notification was issued pursuant to Ann.A2, earlier decision of this Tribunal in OA 767/91 declaring 150 vacancies. Para 3.1 of the notification contains the following condition regarding the age.

"Candidates should be between 18 and 40 years of age as on the date of issue of this Employment Notice, i.e. 10.7.92 (age relaxation will be given to the extent of casual labour service put in subject to upper age limit of 35 years not being exceeded plus 5 years applicable to SC/ST candidates)."

3. The applicants are aggrieved by the aforesaid condition and submitted that it is contrary to the provisions in para 2006(iii) of the IREM and the scheme framed by the Railway and approved by the Supreme Court in Inder Pal Yadav's case.

4. The source of power for fixing the age limit for re-employment of retrenched casual labourers is not mentioned in Ann.Al. In Inderpal Yadav's case there is no such condition about the age limit for casual employees as indicated in An.Al. When the question of re-engagement of retrenched casual labourers in the Railway was argued before the Supreme Court the Railway did not insist for incorporation of any such restriction. If so it would have been incorporated in the Scheme. But the scheme for re-engagement of casual labourers does not empower the Railway to issue a notification fixing an age limit for re-engagement. The very object and purpose of the scheme is to provide employment to the casual labourers who were retrenched earlier, but waiting for re-engagement at the relevant time or the crucial date mentioned in the scheme irrespective of their age or other factors not covered by the judgement in Inderpal Yadav's case.

5. The respondents in the reply did not give any details or source of power of the Railway to fix the age limit. In para 7 of the reply they have stated "the conditions stipulated in Ann.Al are as per the prescribed rules". But nothing is stated about 'prescribed rules'. The learned counsel appearing in this case did not produce for our perusal any such rule as indicated in the reply. On the other hand, the learned counsel for the applicant brought to our notice para 2006 (iii) of IREM Vol.II. It reads as follows:

"(iii) As long as it is established that a casual labour has been enrolled within the prescribed age limit, relaxation in upper age limit at the time of the actual absorption should be automatic and guided by this factor. In old cases where the age limit was not observed relaxation of age should be considered sympathetically. The DRMs may exercise such powers to grant relaxation in age limit."

The aforesaid clause does not provide that for regularisation an upper age can be fixed by the Railway. In the light of the provision in para 2006(iii) of IREM the statement in the reply filed by the Railway cannot be accepted as correct.

6. The respondents pointed out that the third applicant is not entitled to the benefit of the scheme even if the applicant's contentions are accepted for she has been retrenched on 5.12.80 prior to 1.1.81 and her name is not included in the seniority list for want of necessary request from her. Similarly the 4th applicant's name does not find a place in the seniority list. According to the Railway she also did not apply for inclusion of the name after the scheme pursuant to the instruction issued by the Railways **in this behalf**. Their case, according to Railway, stands on a different footing.

7. The learned counsel for the Railway relied on a decision of this Tribunal in OA 1171/92 and submitted that the Railway has the power to issue notifications calling upon casual employees to submit their request for re-engagement and such a notification was upheld by this Tribunal in the aforesad decisions.

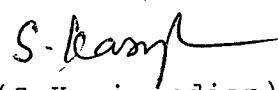
8. Regarding the contention that applicants 3 and 4 are not eligible for inclusion in the live register for re-engagement, we are of the view that it is a matter for verification. Even if they have not directly submitted requests their authorised agents or union might have submitted representations for getting re-engagement. Hence it is a matter for verification as to whether they have made the application either through their Union or authorised agents for getting inclusion in the live

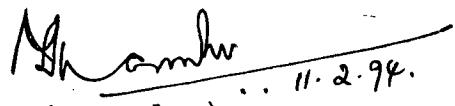
register for re-engagement. Simply because they have not directly submitted any application for registration, they would not lose their right for inclusion in the live register and re-engagement. Even if they have not submitted request if they establish they are eligible retrenched casual labourers, the Railway can consider them for re-engagement as a special case, provided they satisfy all the conditions for re-engagement.

9. The next submission made by the learned counsel for respondents that the notification was upheld by the Tribunal was denied by the learned counsel for the applicant. The judgement was not produced for our perusal. But it is submitted that the specific question of age restriction was not there in the notification considered in that case. If that be so the judgement does not help the respondents and it is distinguishable.

10. The fixation of age limit in Ann.Al does not appear to be in consonance with the scheme as also the provisions contained in para 2006 of the IREM extracted above and it is liable to be quashed for the reasons stated above. In this view of the matter, we are satisfied that Clause 3.1 in Ann.Al as extracted above cannot be sustained. In the result, we allow the application to the extent of quashing Clause 3.1 in Annex.Al notification and directing the Railway to consider the request of the applicants for re-engagement if they are otherwise qualified and eligible for the same in accordance with their turn under the scheme. The applicants may also produce their usual labour cards before the 1st respondent with a copy of the judgement for proper compliance of the directions without any delay.

11. The OA is allowed as above. No costs.


(S.Kasipandian)
Member (A)


N. Dharmadan
11.2.94.
(N.Dharmadan)
Member (J)