

O.A. NO. 877 OF 2011

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O.A. NO. 326 OF 2010

&

O.A. NO. 382 OF 2010

Tuesday, this the 17th day of July, 2012

CORAM:

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. O.A. NO. 877 OF 2011

K.Viswanathan
Retired Senior Trackman
Southern Railway
Trivandrum Division
Residing at Naduthru Veedu, 44-A,
Unnimalakodai, K.K .District

... Applicant

(By Advocate Mr.Martin G Thottan)

versus

1. Union of India represented by
The General Manager
Southern Railway
Chennai – 3

2. The Senior Divisional Personnel Officer
Southern Railway
Trivandrum – 14

... Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

2. O.A. NO. 326 OF 2010

S. Paul Raj
Retired Senior Trackman /
Office of the Senior Section Engineer/
P.Way/Southern Railway/Trivandrum Central
Residing at Pulliyan Vilai, Mankarai PO
(Via) Karunkal, Kanyakumari District – 629 157

... Applicant

(By Advocate Mr. T.C. Govindaswamy)



versus

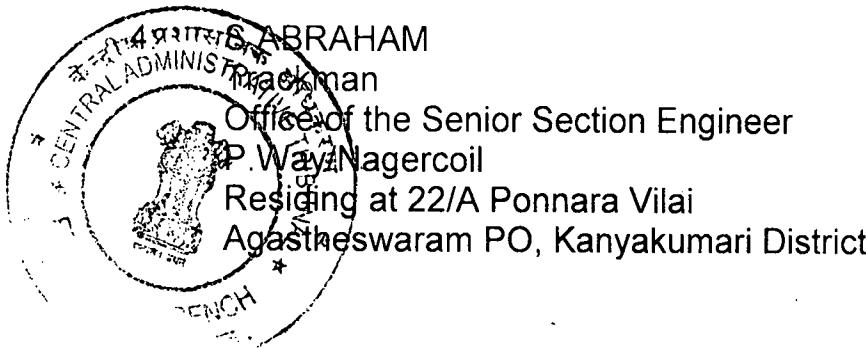
1. Union of India represented by
The General Manager
Southern Railway, Headquarters Office
Park Town PO, Chennai – 3
2. The Senior Divisional Personnel Officer
Southern Railway, Trivandrum Division
Trivandrum – 14
3. The Divisional Finance Manager
Southern Railway, Trivandrum Division
Trivandrum – 14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

... Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

3. O.A. NO. 382 OF 2010

1. R.RAMAIAH
Trackman
Office of the Senior Section Engineer
P.Way/Nagercoil
Residing at South Kundal
Kanyakumari PO, Kanyakumari District
- 2 R.VAIKUNDAM
Trackman
Office of the Senior Section Engineer
P.Way/Nagercoil
Residing at Murungavilai
Raakkamangalam PO, Kanyakumari District
3. P.VETHAMANICKAM
Trackman
Office of the Senior Section Engineer
P.Way/Nagercoil
Residing at Samathanapuram
Kovalam PO, Kanyakumari District



5. G.SELVARAJ
 Trackman
 Office of the Senior Section Engineer
 P.Way/Nagercoil
 Residing at North Kundal
 Kanyakumari PO, Kanyakumari District

6. S.RAJAMARTHANDAN
 Trackman
 Office of the Senior Section Engineer
 P.Way/Nagercoil
 Residing at Ponnara Vilai
 Agastheswaram PO
 Kanyakumari District

7. S.BHIOVAS
 Gate Keeper
 Office of the Section Engineer
 P.Way/Trivandrum
 Residing at Kannayam,
 Pazhanchi House, 1-4-7,
 Kappukad PO, Kanyakumari District

8. C.NESAMANI
 Gate Keeper
 Office of the Section Engineer
 P.Way/Trivandrum,
 Residing at Aluvilai,
 Neyyur PO 629802

9. S. PAUL
 Sr.Trackman
 Office of the Section Engineer
 P.Way.Vadakara
 Residing at: 12.46, Ponnar vilai
 Agastheswaram.P.O, Kanyakumari District

10. T. CHINNA NADAR
 Trackman
 Office of the Section Engineer
 P.way. Nagercoil
 Residing at:Ottayar Vilai,
 Kanyakumari District

11. N. RAJAIYAN
 Sweeper-cum-Porter
 Office of the Station Master
 Kuzhithura
 Residing at: Kanakulamkari Veedu
 Maruthangody.P.O, Kanyakumari District



12. M. THAVASIMUTHU
 Trackman
 Office of the Senior Section Engineer
 P.way. Nagercoil
 Residing at: Santhayadi P.O,
 Kanyakumari District

13. P. SELVARAJ
 Trackman
 Office of the Senior Section Engineer
 P.way. Nagercoil
 Residing at: Samathanapuram
 Kovalam.P.O, Kanyakumari District

14. A.CHELLADURAI
 Trackman
 Office of the Senior Section Engineer
 P.way. Nagercoil
 Residing at: 12/12 Ettukuttu Theri Vilai
 Agastheswaram. P. O,
 Kanyakumari District

15. P. JACOP CHELLADURAI
 Trackman
 Office of the Senior Section Engineer
 P.way. Nagercoil
 Residing at: Samathanapuram
 Kovalam.P.O, Kanyakumari District

16. P. RAJAMANI
 Gate Keeper
 Office of the Section Engineer
 P.way. Vadakara
 Residing at: Paul Danial Puram,
 Vempanoor.P.O, Kanyakumari District

17. G. VEDHA MUTHU
 Trackman
 Office of the Section Engineer
 P.way. Nagercoil
 Residing at: Punnayadi
 Agastheeswaram PO ,
 Kanyakumari District

18. N.JAYACHANDRAN
 Trackman
 Office of the Senior Section Engineer
 P.Way / Nagercoil
 Residing at Vellamadam
 Sahayanagar PO
 Kanyakumari District



19. R. MICHAEL RAJ,
Trackman
Office of the Senior Section Engineer
P.Way / Nagercoil
3/248.C South Shanai Karai
Residing at: Anathan Nagar, Asaripallam.P.O
Kanyakumari District

20. J. MOHANA KUMARAN
Trackman
Office of the Section Engineer
P.Way / Vadakara
Residing at: 5/43A, Vasantha Bhavanam,
Anjali Vilai, Puliyyurkurchi, Thakkalai P.O
Kanyakumari District

21. PAUL PAN DIAN
Trackman
Office of the Section Engineer
P.Way / Nagercoil
Residing at: Paraman Vilai,
Azhikkal.P.O,
Kanyakumari District

22. N. THANGAPANDIAN
Trackman
Office of the Senior Section Engineer
P.Way / Nagercoil
Residing at Vellaiyanthoppu,
Santhiyadi P.O
Kanyakumari District

23. K. DHAS
Senior Trackman
Office of the Senior Section Engineer
P.Way / Trivandrum
Thuttiyarai, Kanjampuram.P.O,
Kanyakumari District

24. E. PAUL NADAR
Sr.Trackman
Office of the Senior Section Engineer
P.Way / Nagercoil
Residing at: No.16-71Samathanapuram,
Kanyakumari District

25. N.NAGENDRAN,
Sr. Trackman
Office of the Senior Section Engineer
P.Way / Nagercoil
Residing at No.27/109-54-A
Kulathankarai Street,
Thuvarancadu, Boothapandy PO
Kanyakumari District



26. R.MUTHULINGAM
Trackman
Office of the Section Engineer
P.Way / Nagercoil
Sukkuparatheri Vilai
Agastheeswaram PO
Kanyakumari District

27. P.Ayyadurai
Trackman
Office of the Section Engineer
P.Way / Nagercoil
Residign at Sakkuparatheri Vilai
Agastheeswaram PO
Kanyakumari District

28. P.Nesamony
Senior Trackman
Office of the Section Engineer
P.Way / Trivandrum
Uthri Viali Veedu
St.Mangadu PO
Kanyakumari District

... Applicants.

(By Advocate Mr.T.C. Govindaswamy)

versus

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2. The Senior Divisional Personnel Officer
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Trivandrum – 14

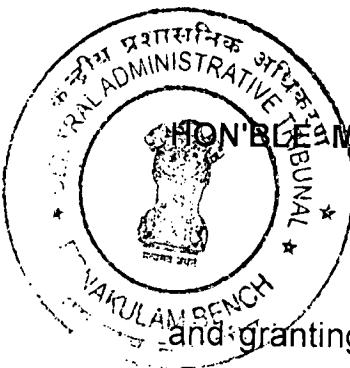
... Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

These applications having been heard on 04.07.2012, the Tribunal on
17-07-12 delivered the following:

ORDER

HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER



Antedating absorption as Temporary Trackman to 12.02.1996
and granting seniority and consequential benefits being common threads in

the above O.As, they were heard together and are disposed of by this common order.

2. **O.A. No. 877/2011 :** Shri K. Viswanathan, the applicant in this O.A was absorbed as Temporary Trackman with effect from 03.11.2003 in compliance with the order of this Tribunal in O.A. No. 615/2004. During the pleading in CP(C) No. 21/2006 in the said O.A, his absorption was antedated to 12.02.1996 and he was granted seniority and promotions. He retired on 31.08.2011. He is aggrieved by the non disbursal of gratuity, monthly pension and other retiral benefits etc. Hence the O.A.

3. **O.A. No. 326/2010 :** The applicant in this O.A was absorbed as Temporary Trackman with effect from 10.03.1999. He retired on 30.09.2008. He seeks the benefit of antedating his absorption to 12.02.1996 as he is similarly situated as the applicants in O.A. No. 37/2009, which was allowed on 18.02.2011 granting the benefits given to Shri K. Viswanathan on the ground that the applicant herein also was his senior. He seeks further direction to recalculate his pension and other retiral benefits on the basis of qualifying service counted from 12.02.1996.

4. **O.A. No. 382/2010 :** The applicants herein were absorbed on different dates in the month of March, 1999 as regular Gangman/ Trackman. Being senior to Shri K. Viswanathan, they seek antedating of their absorption

with effect from 12.02.1996 and consequential benefits.

We have heard Mr. Martin G. Thottan and Mr. T.C. Govindaswamy,



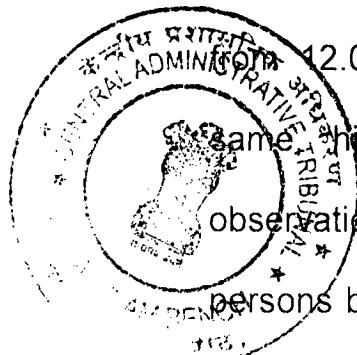
learned counsel for the applicants in the respective O.As and Mr. Thomas Mathew Nellimoottil, learned counsel for the respondents and perused the records.

7. The order of this Tribunal dated 28.09.2006 in C.P.(C) No. 21/06 in O.A.No. 615/2004 is reproduced as follows :

“ It is submitted that the respondents have partially complied with the orders by appointing the applicant as Trackman. But the applicant has not been granted notional benefits of service on par with his juniors in accordance with the discussion at paragraphs at 9 and 10 of the order which states clearly that the applicant has to be considered for re-engagement fixing him at Sl.No. 2134 and to grant him notional benefits accordingly. Respondents have, therefore, to fix his position on par with his juniors since it has been stated in paragraphs 8 & 9 of the judgement that the merged seniority was available to the applicant as on 01.07.1996 and the respondents had conceded that persons below Sl. No. 2134 were re-engaged well before 01.07.1996, the applicant has to be granted the same date and notional benefits of service given accordingly. Three weeks time is granted to the respondents for reporting compliance.”

8. In compliance with the above direction, Shri K.V. Viswanathan was given notional appointment with effect from 12.02.1996 and consequential orders, but not the retirement benefits. The stand of the respondents is that antedating his absorption from 03.11.2003 to 12.02.1996 was not in order. Therefore, the applicant is not entitled to have the service from 12.02.1996 for pensionary benefits. The respondents submitted that, had his eligibility for absorption been finalised correctly, he might not be entitled to count the period

12.02.1996 for pensionary benefits and pending finalisation of the same his pensionary benefits could not be decided correctly. The observation of this Tribunal that Railways had already contended that, as the persons below Sl. No. 2134 had been absorbed well before 01.07.1996, Shri



Viswanathan also should be given the benefit of absorption on the same date was not maintainable since what the Railways had contended in O.A. No. 615/2004 was that persons below Sl. No. 2134 were already absorbed before 01.07.1996 on the basis of their better seniority position in the 01.04.1985 list. Such absorption was not on the basis of their positions in the merged seniority list. The persons below Sl. No. 2134 in the merged seniority list were absorbed only in 2003 and thereafter. Accordingly, Viswanathan's placement at Sl. No. 2134 in the merged seniority list conforming to the number of days of service as 601 days was due for absorption only from 03.11.2003 and such benefits were allowed by the Railways. Owing to the aforesaid observation of this Tribunal and also due to short notice of 10 days time, the Railways were hard-pressed to issue orders. Accordingly, they issued orders antedating the date of absorption of Shri K. Viswanathan from 03.11.2003 to 12.02.1996 by comparing with the persons in the list who were already empanelled in 1996 and granted him the benefits in between the persons therein having 603 $\frac{1}{2}$ and 555 $\frac{1}{2}$ days of service in the Railways. It was a mistake on the part of the respondents not to have relied upon the empanelment list of 1996 and to have relied upon the merged seniority list. Comparison in the empanelment list was uncalled for and in fact, such placement was not at all intended in the order in O.A. No. 615/2004. While examining the pleadings of the applicants in O.A. Nos. 320/10, 382/10 and 468/10, it came to light what were allowed in favour of the applicant in O.A. No. 615/2004, was not maintainable and that the same had to be varied. In

O.A. No. 320/10 and connected cases, this Tribunal held as under :

"6. The sum and substance of the contentions of the applicants is that they are seniors in service to Shri Viswanathan because they have more days of casual service



than his 601 days of casual service. The fact that the applicants are having more than 601 days of casual service is not disputed. In O.A. No. 615/2004, there was a direction to revise the seniority of Shri K. Viswanathan based on which his absorption was antedated to 03.11.2003 on par with his juniors with 599 days of casual service. Further antedating of the absorption of Shri Viswanathan to 12.02.1996 was due to a mistake on the part of the Railways in comparing him with the persons in the list who were already empanelled prior to 01.07.1996 which was a settled position brooking no interference, instead of relying on his seniority in the merged seniority list which came into force after 01.07.1996. Therefore, the respondents are contemplating to recall the unmerited benefits granted to Shri K. Viswanathan on antedating his absorption to 12.02.1996. The respondents are within their right to correct the mistake and not to permit the mistake to be perpetuated. According to the respondents, the correct date of absorption of Shri Viswanathan is 03.11.2003 and he is junior to the applicants in the merged seniority list. In O.A. No. 614/2006 and connected cases, this Tribunal ordered 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.”

The above direction was to consider the applicants herein for regular absorption on the basis of their seniority in the merged list without applying any age limit, subject to medical fitness and other conditions being fulfilled. This would irresistibly lead to granting the applicants the date of absorption on 03.11.2003 on the basis of the stated position of the respondents that the applicants have higher seniority than Shri K. Viswanathan. The claim for any date prior to 03.11.2003 for absorption of the



applicants is not tenable.

7. The respondents were facing a very complex situation. The seniority lists got merged. Senior casual labourers did not turn up in time to get absorption or they were over aged. Upper age limit was removed by the Court. Court orders came one after another. After getting absorbed, seniors raised the issue of seniority based on the number of casual days of work left and right making confusion worse confounded. Mistakes are bound to happen in such a situation.

8. Having regard to the facts and circumstances of these cases, we are of the considered view that the applicants are eligible to get notional seniority in service with effect from 03.11.2003 for the purpose of pension and other retiral benefits only. Ordered accordingly."

9. Thus, it is quite clear that Shri K. Viswanathan received unintended benefits due to a mistake on the part of the Railways. However, the order of this Tribunal in O.A. No. 615/2004 has become final. It being a judgement inter parties, it has become binding on the parties. Therefore, the respondents are legally bound to grant all the benefits accrued to him on account of antedating his absorption as per the order of this Tribunal in the aforesaid Contempt Petition, even if it is based on a mistake. The respondents have acquiesced in by not challenging it in time, if it was based on a wrong submission. Therefore, the contention of the respondents that the applicant in O.A. No. 877/2011 is not entitled to have his service counted from 12.02.1996 for pensionary benefits is not tenable. Hence the O.A. succeeds.

10. On the basis of the order dated 13.10.2011 in O.A. No. 877/2011, the respondents have granted him pension at Rs. 4755/- per month with effect

from 01.09.2011 as per Pension Payment Order dated 05.01.2012.



The ground on which the claims of the applicants in O.A. Nos. 326/10

and 386/10 is that they being senior by virtue of having more number of days of casual service than Shri K. Viswanathan, they are entitled to the benefits granted to him. However, this Tribunal has held in O.A. No. 320/2010 and connected cases that the respondents are within their right to correct the mistake on their part and not to permit the mistake to be perpetuated. A wrong cannot be made a basis for instituting a claim. Hon'ble Supreme Court in various cases has held that the relief sought based on an earlier wrong should not be granted as it tantamounts to perpetuate the mistake and unwarranted litigation. In the case of Viswanathan, there was a clear direction from this Tribunal to antedate his date of absorption. In the case of the applicants in these O.As, there is no such direction. Therefore, Shri K. Viswanathan gets the benefit of antedating his absorption from 03.11.2003 to 12.02.1996 only on the basis of the judgement inter parties, which cannot be extended to the applicants in these OAs. Comparison of the applicants with Shri K. Viswanathan who got unintended benefit, is ill founded.

12. The applicant in O.A. No. 326/10 has cited the order of this Tribunal dated 18.02.2010 in O.A. No. 37/2009 in support of his claim. In the said order, the relevant fact that Shri K. Viswanathan was a beneficiary of unintended benefits based on a wrong submission, was not considered. Therefore, the said order is to be considered as per incurium. Subsequently, as stated earlier in O.A. No. 320/2010 and connected case, this Tribunal has accepted contention of the Railway that it was a mistake on their part that resulted in granting unintended benefit to Shri K. Viswanathan. The applicant in O.A. No. 326/2010 is not eligible for recalculation of his pension, as prayed for.



13. In the light of the above, O.A. No. 877/2011 is allowed. The respondents are directed to grant pension and other retiral benefits to the applicant herein taking into account his total service with effect from 12.02.1996 within a period of 2 months from the date of receipt of a copy of this order.

14. O.A. Nos. 326/2010 and 382/2010 are dismissed. No costs.

(Dated, the 17th July, 2012)

Sd

K GEORGE JOSEPH
ADMINISTRATIVE MEMBER

Sd

JUSTICE P.R.RAMAN
JUDICIAL MEMBER

cvr.



CERTIFIED TRUE COPY

Date 23/7/2012

Deputy Registrar