

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 386/2005

FRIDAY, THIS THE 10th DAY OF FEBRUARY, 2006

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

1 J. Malgan S/o Joseph
Edakunnam Laksham Veedu
Vadakkum Bhagom
Eravipuram PO, Kollam

2 K. Babu S/o Karunakaran
Puthen Veedu
Unichakam Veedu Purayidom
Cantonment North PO
Kollam.

Applicants

By Advocate Mr.M. P. Varkey

Vs.

1 Union of India represented by
the General Manager
Southern Railway,
Chennai-600 003

2 Senior Divisional Personnel Officer
Southern Railway
Trivandrum-695 014

Respondents

By Advocate Mr.P. Haridas.

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This application has been filed seeking the following reliefs:

(a) Declare that the non-appointment of the applicants as Trackmen when their juniors at A-1 were so appointed is unjust, illegal, unconstitutional and without jurisdiction.

(b) Direct the respondents to appoint the applicants as Trackmen, retrospectively from the dates on which their respective juniors at A1 were so appointed.

© Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2 The applicants are retrenched Casual Labourers of the Civil Engineering Department of Trivandrum Division of Southern Railway. According to them the merged seniority list of 830 retrenched Casual Labourers has been published by the respondents as in Annexure A1 and they figure as serial Numbers 18 and 293 therein. They had appeared before the respondents for verification of the Casual Labour Card and other documents for appointment as Trackman which was notified by letter dated 20.6.2003. In September, 2004 they came to know that their juniors in the seniority list have been posted as Trackmen whereas they have not been selected. Aggrieved by the same they submitted representations on 14.9.04 and 17.9.04 Since no response has been given by the respondents to their representations they approached this Tribunal seeking above reliefs.

3 The respondents in their reply statement opposed the Application on the ground of delay and that the applicants had not impleaded the juniors who are stated to have been appointed. It is admitted that the applicants figure in Sl. Nos 2225 and 2513 respectively in the merit seniority list prepared in compliance with the orders of the Tribunal in O.A. 1706/2004. It is also admitted that the notification calling for retrenched Casual Labourers figuring upto Sl. No. 3063 had been issued and that the applicants had reported to the office of the respondents in response to the said notification on 22.7.2003. However, on verification of their certificates it was found that both the applicants had crossed the age limit of 43 years for OBC permitted in the Railway Board's letter dated 20.9.2001, they are not eligible to be considered for re-engagement.

4 The applicants filed a rejoinder stating that they have filed the OA as soon as they came to know about the appointment of their juniors overlooking their claims and hence the delay does not apply. They have also denied the Railway Board's letter dated 20.9.2001 cannot be made applicable to them and the crossing of the normal age limit are not attributable to them as the respondents have taken

more than seven years to absorb the incumbents in the seniority list. They have also enclosed the judgment of this Tribunal in O.A. 1706/94 directing the respondents to prepare a merged seniority list.

5 I have heard arguments of learned counsel on both sides. The learned counsel for the applicant drew my attention to the earlier orders of this Tribunal in O.A. 1706/94 the lists which were prepared under the scheme approved in Inder Pal Yadav's case(AIR 1985 (2)SCC 548) for engaging the Project Casual Labourers, one list covering those who were not in service as on 1.1.1981 and another list covering those who were in service as on 1.1.1981 were directed to be merged together and the merged seniority list prepared from which the re-engagement should be undertaken. The applicants figure in this merged list and therefore they have to be absorbed according to their seniority in the list. Regarding the contention of the respondents that the applicants are over aged he brought to my notice the earlier judgments of this Tribunal in O.A 37/2003 and OA .633/03 wherein this Tribunal had directed that for the reason of being overaged the claims of the petitioners could not be rejected as these are not cases of initial recruitment. Similar decision in O.A. 633/03 which was also taken in appeal by the respondents before the Hon'ble High Court of Kerala in WP(C) No. 30832 of 2004 was also cited in which the Tribunal's orders in all the above orders were discussed and the court had held that the stand taken by the Tribunal was not so unreasonable to warrant interference and dismissed the WP(C). The learned counsel therefore argued that the applicants in this case are identically placed and there should not be any discrimination. The learned counsel for the respondents on the other hand reiterated that whatever concession had been prescribed in the Railway Board's order had been given to the applicants.

6 The placement and seniority of the applicants in the live register (seniority list of Annexure A1) are not disputed.. It is also admitted that juniors have been picked up and appointed. The only question arising for consideration is whether

the age limits prescribed in the Railway Board's orders dated 20.9.01 are applicable to the applicants herein. The scheme of absorbing retrenched casual labourers was formulated by the Railways following the directions of the Supreme Court after protracted litigation and was given a final shape after the Inder Pal Yadav's case in 1987. The objective in the scheme was that Project Casual Labourers who have been in service for long period and had given valuable service to the Railways should not be thrown out and should get preference in employment before open recruitment is resorted to. To facilitate such employment the respondents were directed to prepare the merged list and as per the directions in the OA 1706/94 of this Tribunal the merged seniority list was also prepared as in Annexure A1. Though the directions in the OA were given in June, 1996 the list appears to have been notified in the year 2003 as seen from Annexure A1. Therefore the contention of the applicants that even though they were in the seniority list from 1996 onwards it was only after 7 years that an opportunity for employment has come their way is genuine. The railway Board appears to have been issued some instructions stipulating the age limit. These instructions have not been produced by the respondents. However, the Tribunal had occasion to consider this aspect of fixing such age limits for retrenched casual labour in various OAs referred to by the counsel for the applicants. It was categorically concluded that such age limits are applicable to cases of fresh recruitment and in the totality of circumstances under which the direction to formulate a scheme as in IP Yadav's case was given, the Hon'ble Supreme Court did not contemplate that any upper age limit should have been prescribed or made a bar for future employment. The respondents had all along taken a stand that no further relaxation of age limit than those given in the Railway Board's orders can be considered. When the Courts have consistently held that such a stand of the respondents is totally unjust and discriminatory, considering the laudable objectives of recognising the service of the retrenched casual labourers, it is not proper for the respondents to cling on to this unreasonable stand that in the interest of quality of work, age limits should not be

relaxed. Senior employees have been waiting for long in this list and they were all within the age limit when they were originally recruited and if the respondents continued to pick up the juniors on the basis of age the senior wills never have a chance at all and this would be totally against the spirit of the scheme. The Apex Court has also; in several judgments decided that the scheme of regularisation of casual labour is a one time measure and hence the benefit is restricted to those who are already in the list and no future liabilities will arise for the department. The observation of the Hon'ble High Court of Kerala in WP.30832/2004 dismissing the same are relevant in this context. The relevant portion is extracted below:

6. The Tribunal had noticed that these instructions had come long after the petitioners had been brought to the live register and the Railway Administration had not taken note of the circumstances that it was not a case of fresh recruitment as such. There was no such embargo, prescribed as could be gathered from the judgment of the Supreme Court in Inderpal Yadav. It was for the above reason that the Tribunal had directed that the cases of applicants should be considered ignoring the age factor.

7. The applicants are a vanishing group and as the view point of the railway Administration had also been taken notice of we do not think that the stand taken by the Tribunal was so unreasonable for this Court. *to interfere.*

6. Following the ratio of the above judgment and the earlier orders of this Tribunal, the OA is allowed. The respondents are directed to consider the applicants for appointment without applying the age restriction and a final decision may be taken within a period of three months from the date of receipt of a copy of this order. No costs.

Dated 10.2.2006.

Sath. Nair
SATHI NAIR
 VICE CHAIRMAN

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