

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.391/2007

Monday, this the 15th day of October, 2007.

CORAM :

HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER

1. B.Christudas, Ex-casual Labourer,
Southern Railway, Trivandrum Division,
Kavikuzhi, Mele puthenveedu,
Ottasekaramangalam, Neyyattinkaran T.K.
Thiruvananthapuram.
2. J.Vijayakumar,
Southern Railway, Trivandrum Division,
Sree Padmanabha Thoppu Veedu,
Thamalam, Pujapura.
Thiruvananthapuram. : Applicants

(By Advocate Mr.Martin G Thottan)

Vs.

1. Union of India, represented by
the General Manager, Southern Railway,
Headquarters Office, Chennai-3.
2. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum. : Respondents

(By Advocate Shri Thomas Mathew Nellimoottil)

The application having been heard on 15.10.2007, the Tribunal on the same day delivered the following :

ORDER

HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER

The applicants in this case have been aggrieved by rejection of their claim for regularization on account of the fact that they are over aged for such regularization. Briefly stated the facts of the case as contained in the OA are as

under:-



Applicant No. 1 was initially engaged on 30-01-1979 and retrenched on 05-12-1980. Applicant No. 2 was engaged on 23-01-1979 and retrenched on 05-12-1980. Their names were included in the merged seniority vide SI Nos. 2045 and 2087 respectively. In the wake of the Apex Court's decision in the case of Inderpal Yadav (1985)2 SCC 64 the Railway Board had decided to consider re-engage the retrenched the casual labourers and the applicant presented themselves in 2003 before the authorities for verification of their casual labour service but their cases were not considered though their juniors upto Serial No. 3022 were considered and re-engaged. Representations were made by the applicants but of no avail and consequently, OA No. 853/06 was filed. As by that time another OA No. 386/05 was decided by the Tribunal, wherein the Tribunal had directed that consideration should be given without any reference to the age limit, the above OA No. 853/05 was disposed of with a direction to the representation of the applicants in the light of the order in OA No. 386/05. But the respondents had rejected the case of the applicants stating that the applicants have crossed the age limit for re-engagement/regularization. Hence this O.A.

2. Respondents have contested the OA. According to them, the order relied upon by the applicants i.e. order in OA 386/05 has, on being challenged, been stayed by the Hon'ble High Court and hence, the OA is liable to be dismissed.

3. The case has been considered. True, the order of the Tribunal in OA No. 386/05 stands stayed. However, in the case of Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn., (1992) 3 SCC 1 has held as under:-

While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order

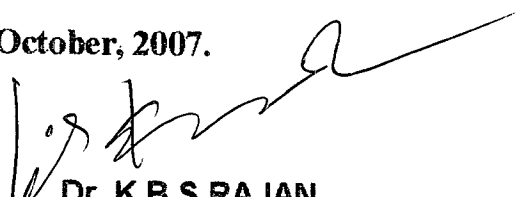
which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending.

In view of the above, relying upon the order which strands stayed by the higher court would not be a bar. All that is to be seen is that the decision in that case would bind this case as well.

4. Accordingly, the OA is allowed. Respondents are directed to consider the applicants for re-engagement, without applying age restriction and final decision taken in this regard. However, it is made clear that this order is subject to the same restriction as the order in OA No. 386/05 and the decision by the Hon'ble High Court in the Writ Petition challenging the order in OA No. 386/05 would bind this case as well.

5. No cost.

Dated the 15 th October, 2007.


Dr. K.B.S. RAJAN
JUDICIAL MEMBER