

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM**

Original Application No. 394 of 2009

THURSDAY, this the 6<sup>TH</sup> day of August, 2009

**C O R A M :**

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

J. Sreekumar,  
Ex-Casual Labourer,  
Southern Railway,  
Trivandrum Division,  
Residing at T.C. 141/386,  
Thekke Veedu, Kuriyathy, Mancaud P.O.,  
Thiruvananthapuram : 695 009

.... Applicant.

(By Advocate Mr. Martin G. Thottan)

v e r s u s

1. Union of India represented by  
The General Manager,  
Southern Railway, Headquarters Office,  
Chennai – 3
2. The Divisional Personnel Officer,  
Southern Railway, Trivandrum Division,  
Trivandrum. ....

Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

The Original Application having been heard on 31.07.09, this  
Tribunal on 6.8.09. delivered the following :

**O R D E R**  
**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

The applicant had earlier approached the Tribunal in OA No.  
852/06 when this Tribunal passed the following order vide order dated  
8<sup>th</sup> June 2007:

*[Signature]*

"The claim of the applicant is that whereas he was engaged earlier for 629 days as casual labour, in respect of which authentication as per Annexure-A had been furnished by the respondents, while working out the seniority, credit to the tune of only 171 days had been given, by which the seniority of the applicant for the purpose of reengagement/ regularization had been pushed down from 2112 to 2713. Applicant has challenged the Annexure A-3 order dated 26-0-2006 whereby the respondents have rejected his claim for reengagement/regularization on the ground that the applicant has crossed 40 years as on 01-01-2003.

2. Respondents have contended that the applicant had served as early as in 1996 and vide Annexure R-1, for verification purposes, call letters were sent in respect of individuals with the seniority Nos. 2191 to 3063 and the applicant, whose seniority position was 2713 based on his total length of casual service of 171 days, did respond, which meant that he had accepted his seniority position as 2713, which was based on, as aforesaid, his total length of casual labour period of 171 days. It has also been contended that the statement of having 629 days of service as per Annexure A-1 is not accepted by the Respondents herein for effecting any change in the seniority list concerned, inasmuch as the list had been published by the Project and that the authorities in the open line are not competent to make any connection therein.

3. Arguments were heard and documents perused. The fact that the second stage of engagement of 171 had been accepted by the respondents which tally with the second part of Annexure 1, does go to show that Annexure A-1 is genuine. What is required to be seen is whether the earlier period could be added to the latter period and if so, who is the competent authority to do so.

4. That the applicant had submitted to Annexure R-1 call letter does not in any way mean that he had accepted the seniority position as reflected by the respondents. After all, when a communication had been received from the railways for regularization etc., no one would try to find out the deficiency in it and to agitate at the time of regularization. The applicant would have sanguinely hoped that his seniority would have been fixed with 629 days of service as the service rendered. It is only when he had ascertained that his service of only 171 had been taken into account that he had rightly come up with the claim. The applicant cannot be faulted in this regard.



5. The contention of the respondents is that the open line authorities cannot effect any changes of the seniority list prepared by the Project. The positioning of the casual labours either at open line or project is the prerogative of the employer, i.e. the Railways. The applicants have no say in that matter. From that point of view, it is for the Railways to consider the aspect of adding the period of casual labour both in project and open line. The open line authorities, as contended may not have the power to effect any change. However, there must be an authority, above such open line authorities, who would have control both open line and project such as Sr. D.P.O. or the General Manager, the respondents herein. As such, the matter has to be considered at the appropriate level.

6. In view of the above, the OA is allowed. It is declared that the applicant is entitled to be considered for regularization, treating his total casual labour service as of 629 days and not 171 days. In that event, reengagement/regularization as the case may be, of the applicant as a casual labour may be anterior to 01-01-2003 from the date his juniors (2113 onwards) in the live casual labour register would have been so reengaged/regularized and the applicant would be well within the age limit for regularization at that material point of time. The Second respondent is, therefore, directed to review the matter and taking the total period of service as casual labour rendered by the applicant as 629 days, fix his seniority and effect his reengagement/regularization from the date any one who had rendered 629 or nearby days of service had been so reengaged/regularized. Such a regularization would be only notional and actual from the date the applicant had been regularized. The notional fixation would give the applicant the benefit of due seniority plus fixation of pay at par with the junior on the date of his regularization from the date the immediate junior had been regularized but actual pay would be only from the date the applicant starts functioning as a regular employee of the Railways.

7. This drill has to be performed within a period of three months from the date of communication of this order.

8. No costs."

2. While the applicant underwent medical examination, the respondents had rejected his case on the basis of the medical standard



certified by the medical authorities. The rejection is as hereunder:-

" You have filed OA No. 852/2006 before the Hon'ble Central Administrative Tribunal, Ernakulam Bench, for considering you for re- engagement / empanelment in preference to persons having less number of days of service. Based on the judgement of the Hon'ble Tribunal, you have been advised to report to this office with all necessary original documents for processing appointment.

Accordingly, you have reported to this office and was directed to undergo the Medical examination for A-3/B-1 classification vide Sr. DMO's certificate No. C.471/08-09 dated 4.11.08 and you have been advised of the medical unfitness.

As you are unfit in Medical Classification B-one, required for appointment as Trackman, you cannot be offered appointment. Further, there is no provision to consider you for appointment in another category, requiring lower medical classification."

3. The applicant has challenged the above order and prays for the following main reliefs:-

- (i) Call for the records leading to consider to issue of Annexure A3 and quash the same.
- (ii) Direct the respondents to consider the applicant for absorption to any Group 'D' post which requires lower medical classification.
- (iii) Award costs of and incidental to this application.

4. Respondents have contested the O.A. by filing counter. They have raised a preliminary objection of Res judicata as well vide para 6 of the counter, on the basis of the fact that the applicant had earlier approached the Tribunal in OA No. 852/2006.



5. The respondents have also contended that vide Railway Board directives, casual labourers who have rendered a minimum of 6 years service and who are found unfit for a particular category during medical examination only are to be considered for an appointment in lower medical category. In the case of the applicant as he had put in only 630 days of service, which is less than 6 years, his case cannot be considered for such lower medical categorization.

6. Counsel for the applicant submitted that there is no question of res-judicata as the respondents have raised this issue only for the first time and earlier the cause of action was entirely different. Again, the counsel invited the attention of this Tribunal to the decisions in OA No. 85/08 and 590/08 on identical issue and submitted that a like order would render justice to the applicant.

7. In 590/08 the Tribunal has held as under:-

“ Applicant No.1 in this OA is applicant No.6 in OA No.271/06, applicant No.2 in this OA is applicant No.9 in OA No.271/06 and applicant No.3 is the applicant No.1 in OA No.352/06. These OAs were disposed of on 14.3.2007 by a common order, wherein this Tribunal held as under:

*“34. For the above mentioned reasons, I am of the considered view that the findings of this Tribunal in the various earlier orders on the same issue have been vindicated in the Hon' High Court's order referred to above and it is the correct and legally valid solution to the problems of this category of retrenched causal labour who have been waiting for justice for long years.*



35. In the result, I quash Ministry of railway's letter No.E(NG)-II/99/CL/19 dated 28.2.2002 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."

[2] This order of this Tribunal was challenged before the High Court in a batch of writ petitions No.WP(C) Nos.3246/ 2007 and others and by a common judgment dated 29.11.2007, the High Court held as under:

*"In the result, these writ petitions are disposed of issuing the following modifications to the order of the Central Administrative Tribunal*

*The age limit prescribed as per Circular Nos. E(NG)II-99/CL/19 dated 28.2.2001 and E(NG)II-99/CL/19 dated 20.9.2001 will not be applicable to the casual labourers, who have completed 360 day's service. Quashing of the above said circulars is set aside. Even though the age limit is not applicable to absorption, other stipulations in the Rules like medical fitness etc. can be insisted by the Railways."*

[3] In yet another identical Writ petition, [WP(C) No.29813] (Annexure-A/3) the High Court by judgment dated 11.12.2007 held - "the point raised by the writ petitioners is covered by the judgment of this Court in WP(C) No.16330/06 and connected case dated 29.11.07. Accordingly, this writ petition is disposed of ordering that the directions in that common judgment will govern this case also."

[4] As the respondents did not take necessary action, contempt was filed and as there was substantial compliance, the contempt petition was closed with liberty to the applicants concerned to approach the Tribunal in case any grievances subsisted. Accordingly, this application has been filed.



[5] The respondents had invited applicants for subjecting themselves to medical examination and the applicants had participated in the same. The Medical Board issued certificate to the effect that the applicants are not fit in the cases of 'Aye-three' and 'Bee-one' medical standard. Consequently, the cases of the applicants for regularisations have been rejected. Hence this OA praying for the following reliefs:

[i] for a declaration to the effect that refusal on the part of the respondents to considerer and absorb the applicants either as Trackman or other Group-D posts requiring lesser medical standards is arbitrary, discriminatory, contrary to law.

[ii] for direction to the respondents to consider and absorb the applicants as track men or against any other Group-D posts requiring lesser medical classification, on par with their juniors in the list of retrenched casual labourers with all consequential benefits.

[6] Respondents have contested the OA. According to them they were to be considered for re-engagement as Casual Labourers in the Civil Engineering wings of the Railways, subject to the fulfillment of the conditions prescribed. In other words, the eligibility for being considered is limited to the post of Gangman only and not to any other posts in Indian Railways. The Hon'ble High Court in its judgment has held that the stipulations in the rules like medical fitness etc. can be insisted upon by the Railways and the applicants are found to be not medically fit for the said post and therefore, their claim is not liable to be considered against any other post. The prayer of the applicant, is therefore, deserves to be dismissed.

[7] In the case of Inder Pal Yadav all the retrenched casual labourers are to be considered for re-engagement as casual labourers in the Civil Engineering Wing of the railways subject to fulfillment of the conditions prescribed. Thus, the applicants are to be engaged as track man. Such track man are being asked to perform the duties as Gatekeeper as well at times. As such the medical standard accepted as 'Aye-three' and 'Bee-one' which are prescribed standard for the above post. Since the applicants did not fulfill the aforesaid medical standard, their cases have been rejected.

[8] Counsel for the applicants argued that in identical matter in OA 85/08, [decided on 30.3.09] this Tribunal has held that in case the applicant is not found medically fit for one post, it should be seen whether he is fit for any other post with lesser



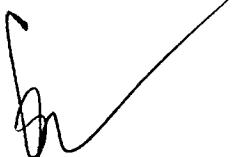
category, if so he should be regularised in that post. In this regard, para 8 of the order dated 30.3.09 refers and the same is reproduced below:

*"In the aforesaid facts and legal position it is quite clear that the respondents ought to have considered the applicant to any Group-D posts for which 'B1' medical classification is not necessary. It is not the case of the respondents that they do not have any posts for which medical classification 'C1' is only necessary. The applicant being a casual labourer admittedly having 1071½ days of service at his credit cannot be just ignored in the matter of regularisation. It is seen that the respondents have not considered his various requests for subjecting him for fresh medical examination and to appoint him against a post for which lower medical classification is sufficient. I, therefore, direct that the respondents shall subject the applicant for re-medical examination within a period of one month from the date of receipt of a copy of this order and to re-assess his medical fitness and he shall be offered Group-D post for which the lower medical classification in which he has been placed is sufficient. If he is so appointed, he shall also be given the notional seniority vis-a-vis his junior who has been appointed to the same category. With the aforesaid directions, the OA is allowed. There shall be no order as to costs."*

[9] Counsel for the respondent does not dispute the fact that the case of the applicant is identical to that in the OA referred to above.

[10] As the ratio in the aforesaid judgment fully applies to the facts of the instant OA, the present OA should also be allowed. Accordingly, the OA is allowed. The respondents are directed to subject the applicants for re-medical examination within a period of one month from the date of receipt of a copy of this order and re-assess his medical fitness and the applicant shall be offered Group-D post for which the lower medical classification in which he has been placed would be sufficient. If the applicants are so appointed, then they shall also be given the notional seniority vis-a-vis his junior, who has been appointed to the same category. In the facts and circumstances there shall be no order as to costs. "

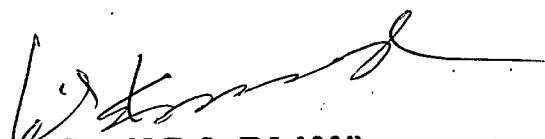
8. As the two cases are identical, it would be in the fitness of things if a like order in this case is also passed.

A handwritten signature in black ink, appearing to read 'B.M.' followed by a stylized surname.

9. Accordingly, this OA is disposed of with a direction to the respondents to subject the applicant for re-medical examination within a period of one month from the date of receipt of a copy of this order and re-assess his medical fitness and the applicant shall be offered Group-D post for which the lower medical classification in which he has been placed would be sufficient. If the applicant is so appointed, then he shall also be given notional seniority vis-a-vis his junior who has joined in the same category.

No costs.

(Dated, the 6<sup>th</sup> August, 2009)



(Dr. K B S RAJAN)  
JUDICIAL MEMBER

cvr.