

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 410 of 2007

Friday., this the 31st day of October, 2008

C O R A M :

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

K.P. Surendran,
S/o. Late Narayanan,
Welder Grade III, Office of Section Engineer
(Permanent Way), Southern Railway, Thirupattur,
Residing at Quarter No. 33-A,
Thirupattur. ... Applicant.

(By Advocate Mr. T.A. Rajan)

v e r s u s

1. Union of India represented by
The General Manager,
Southern Railway, Chennai – 3
2. The Senior Divisional Personnel Officer,
Southern Railway, Palghat. ... Respondents.

(By Advocate Mr. Sunil Jose)

(The Original Application having been heard on 22.10.08, this
Tribunal on 31-10-08 delivered the following):

O R D E R

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

The applicant earlier filed OA No. 116/1996 along with another
and the Tribunal disposed of the same as under, vide its order dated

2.12.1997:-



"2. Both the applicants were working as casual labourers (Welders). They were also granted temporary status in the year 1984. They were subsequently absorbed as Skilled Welders Grade - III. As per A1 order, applicants who were posted as Welders Grade-III against the decasualisation posts were reverted to the post of casual labourers (Welders.)

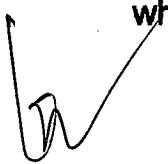
3. According to respondents 1 and 2, the contesting respondents, the applicants have been reverted only due to want of vacancies. The details as to how vacancies are not available to accommodate the applicants as Welders Grade-III are also stated in the reply statement.

4. Various grounds are raised in the O.A. The learned counsel appearing for the applicants was heard. After hearing him and going through the pleadings and the documents made available in this OA, I am convinced that none of the grounds raised could be upheld.

5. Since the reversion of the applicants is only due to want of vacancies, the learned counsel appearing for the respondents 1 and 2 submitted that as and when vacancies arise the applicants will be absorbed as Skilled Welders Grade-III. The submission of the learned counsel for the said respondents is recorded."

2. The absorption or regularization of the applicant in the grade of Welder III thus depends upon the availability of vacancy in that grade in the respective quota. This is the admitted position.

3. Respondents have, in their reply, given their calculation of the total number of posts welders in the Palghat Division, the manner in which they are to be filled up and in brief the same is as under:-



(a) Initial sanction as per order dated 14-08-1991 (vide Annexure R-2A): 9 posts to be filled up by way of trade test amongst Artisan Khalasi/Artisans who were absorbed in lower grade after 01-01-1982.

(b) 50% by absorbing serving CLR Artisans.

4. Thus, while 5 posts were to be filled up by way of trade test amongst Artisan Khalasi etc., remaining 4 were filled up by absorbing the then CLR Artisans and the applicant was also one among them. As there was a surrender of three work charged posts of Welder Gr. III, the incumbents of those posts were to be accommodated and thus, the three were adjusted against the five posts to be filled up by way of (a) above. One Shri K. Aravidakshan and T.K. Aboobacker were two of the three so adjusted. However, it had later been observed that these two were earlier functioning as CLR and were posted as Welders against the 25% quota and thus, they could be promoted only under the 25% quota by way of absorption of the serving CLR Artisans and hence, their adjustment was against two of the four posts to be filled under (b) above.

This necessitated in the reversion of the applicant and another junior. It was against this reversion that the applicant had filed OA No. 116/93


 which was disposed of as stated above.

5. The position thus is that the applicant has to wait for his turn for promotion to the post of Welder Gr. III under the 25% quota in accordance with the provisions of Para 2007 of IREM.

6. It has been the admitted fact that no one junior to the applicant has been promoted to the post of Welder Gr. III.

7. It is also noted that the applicant who was offered the regular post of Gangman chose not to accept the same and has been continuing only as a CLR in the Skilled Grade.

8. While the above submissions of the respondents in the counter are fully logical, what was puzzling was their stand that no vacancy to be filled up under this quota since 1996 arose! The respondents were, therefore, directed vide order dated 11-02-2007 to furnish a statement of vacancy position since 01-01-1996 and it is in compliance with the above order that the respondents have furnished the additional reply. According to them, under the 25% quota, of which also only half thereof would go for regularization of CLR, regularization could take place only when there are at least eight vacancies in a year and right from 1996 there has never been 8 vacancies or more in any particular year. Hence, the applicant could not be considered for regularization under the 25% quota. Applicant in his additional rejoinder questioned the



method of calculation and also the statistics provided in the additional reply and contended that even as at present, vacancy caused by retirement of one Shri Ramankutty on 30-06-2007 and another arisen w.e.f. 30-11-2007 caused by retirement of one Shri Murugesan are available. Further one more vacancy is likely as of 30-12-2008 due to impending retirement of one Shri E.K. Achutahan. Thus, according to the applicant, the applicant could be accommodated against any one of these posts. In their 2nd additional reply, however, respondents have stated that due to creation of Salem Division and diverting of posts of Welders amongst others, from Palghat Division, at present there is only one post of Welder in the Palghat Division and four at Salem Division. And according to the respondents, there is no vacancy in the Salem or Palghat Division.

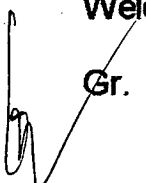
9. The applicant has filed the second additional rejoinder, narrating the positioning of 7 welders on the basis of Annexure A-6 and R-2© and submitted that the next vacancy shall have to go to the applicant. That there is no vacancy at Salem division has been questioned by the applicant as according to him the post vacated by one Shri M. Murugesan Welder Gr. II when filled up would result in a chain vacancy of Welder Gr. III against which the applicant could well be considered.



10. Counsel for the parties argued on the above lines and tried to prove their respective case.

11. Undisputedly, the applicant has been languishing as a CLR for the past 27 years and due to non availability of vacancies administrative reasons (creation of new Divisions) his case could not come up for promotion as a welder Gr. III. Neither the applicant nor for that matter the respondents could be blamed for this situation. However, it is seen that a resultant vacancy in Welder Gr. III would arise in the event of filling up Welder Gr. II in the Salem Division where the vacancy arose due to retirement of Murugesan as on 30-06-2007. Further, one more vacancy is likely to arise w.e.f. 31st December, 2008, according to the applicant. Since Salem Division has been created only from Nov. 2007, this vacancy could well be treated as having arisen at the undivided Palghat Division and the same has been filled up under the 12.5% quota meant for regularization of the CLR.

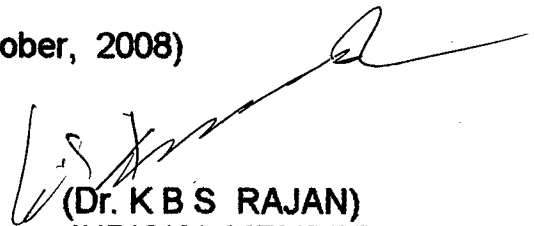
12. In view of the above discussion, this **OA is disposed of** with a direction to the respondents to consider the case of the applicant against the 12.5% quota for regularization of the CLR in the skilled grade as and when the resultant vacancy arises at Salem Division in the grade of Welder Gr. III. The applicant shall however, stand junior to the welder Gr. III already serving in the Salem Division. In the alternative, the



applicant's case be considered against the next available vacancy likely to be available w.e.f. 01-01-2009, if the same arises earlier.

13. No costs.

(Dated, the 31st October, 2008)



(Dr. K B S RAJAN)
JUDICIAL MEMBER

Cvr.