

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD**

**Original Application No. 1222 of 2013**

**Reserved on: 29.10.2018**

**Order pronounced on: 30.10.2018**

Between:

1. A. Narasimha, aged 53 yrs, S/o. A. Ramulu,  
Resident of Nagaram Village, Voligonda Mandal,  
Nalgonda District.
2. R. Bikshpathaia, aged 57 yrs,  
S/o. R. Madl, Resident of Thokkapuram Village,  
Post: Nandnam Village, Dhuvanagir mandal,  
Nalgonda District.
3. K. Yadagiri, Aged 54 years, S/o. K. Narasimha,  
Resident of Gokaram Village, Mandalam Voligonda,  
Nalgonda District.
4. Ch. Sri Ramulu, Aged 53 years, S/o. Sivaiah,  
Resident of Gokaram Village, Mandalam Voligonda,  
Nalgonda District.
5. P. Yadaiah, aged 52 years, S/o. Pichaiah,  
Resident of Dhanampalli Village, Mandalam Ramanapeta,  
Nalgonda District.
6. G. Yellaiah, aged 52 years, S/o. Chandraiah,  
Resident of Pengal Village, Ward No.12, Nalgonda district.
7. A. Shankaraiah, aged 51 years, S/o. A. Kanakaiah,  
Resident of Janamapally Village, Post: Ramannapeta  
Mandal Nalgonda District.
8. P. Sriramulu, aged     yrs, S/o. P. Mallaiah,  
Resident of Anaparthi Village, Nalgonda Mandal,  
Nalgonda District.
9. K. Narasimha Reddy, aged 48 yrs, S/o. Laxma Reddy,  
Resident of Sudha Sweet House, Hyderabad Road,  
Nalgonda District.
10. M. Brahmaiah, aged 54 years, S/o. Laxminarasaiah,  
Resident of 1-8-269, Qualanagar, Bhuvanagir, Nalgonda district.
11. K. Ramulu, aged     yrs, S/o. Sayulu,  
Resident of Nagaram Village, Voligonda Mandal,  
Nalgonda District.

12. Mallaiah, aged 50 yrs, S/o. Narsimha  
Resident of Nagaram Village, Voligonda Mandal,  
Nalgonda District.
13. Yadaiah, aged 52 yrs, S/o. Mallaiah,  
R/o. Nagaram Village, Voligonda Mandal,  
Nalgonda District.
14. G. Bixapathi, aged 56 yrs, S/o. Narasimha,  
R/o. Kondapuram, Narayanapuram Mandal,  
Nalgonda District.
15. Md. Sarwar, aged 52 yrs, S/o. Abdul Salam,  
R/o. Meerabagh Colony, Nalgonda District.
16. Istar aged 54 yrs, S/o. Pentaiah,  
R/o. Narkatpally, Post Sangam,  
Voligonda Mandal, Nalgonda District.

...Applicants

**And**

UOI rep. by its

1. The Secretary, Ministry of Railway,  
Railway Board, Rail Bhawan, New Delhi.
2. The General Manager,  
South Central Railway, Secunderabad.
3. The Chief Personnel Officer,  
South Central Railway, 4<sup>th</sup> Floor,  
Rail Nilayam, Secunderabad.
4. The Divisional Railway Manager,  
South Central Railway, Hyderabad Division,  
Hyderabad Bhavan, Secunderabad.
5. Deputy Chief Engineer (Construction),  
MMT Secunderabad Division,  
South Central Railway, Secunderabad.
6. The Chief Administrative Officer (Hq),  
South Central Railway, Secunderabad.

...Respondents

Counsel for the Applicants ... Mr. G S Rao

Counsel for the Respondents ... Mr.V.V.N. Narasimhan, SC for Railways

**CORAM:**

**Hon'ble Mr. B.V. Sudhakar** ... **Member (Admn.)**  
**Hon'ble Mr. Swarup Kumar Mishra** ... **Member (Judl.)**

**ORDER**

***{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}***

The OA is filed for not regularising the services of the applicants in Group D grade in spite of availability of vacancies and in accordance with the order of the Hon'ble High Court of A.P. in W.P.No.6537 of 2006 dt 23.9.2013.

2. The brief facts of the case are that the applicants worked as casual labourers in projects grounded by the respondents organisation from 1980 to 1994. They worked for more than 360 days in different spells. The applicants, when they approached this tribunal in OA 578 of 2002 on the issue, the respondents were directed to reengage them as casual labourers as and when work is available and consider them for absorption as and when vacancies arise according to their seniority. Respondents contested the matter in W.P.No.6537 of 2006 but the Honourable High Court of A.P ordered status quo as on 6.4.2006 considering the orders of this Tribunal on the issue. Accordingly the respondents have absorbed 5 applicants and the rest were rejected on grounds that they were over aged. The applicants represented on 5.1.2012 stating that there are a number of vacancies as is evident from notification dt 14.2.2011 of the respondents and that they are eligible to be absorbed on regular basis as per para 2006 of IREM. The respondents have not taken action to absorb them by relaxing the age by invoking the powers vested in R-4. The W.P was finally disposed stating that the respondents therein have to work out their remedies separately and hence the present OA is filed.

3. The contention of the applicants is that as per clause (iii) of para 2006 of IREM they are eligible to be absorbed. The Railway Board has directed the General Manager, South Central Railway vide lr dt 23.12.2002 that the recruitment for 2500 vacancies under Group D category shall be resorted to only

after exhausting the possibility of absorbing i) surplus staff available for redeployment, ii) Casual labour on roll iii) Ex. Casual labour on live register and supplementary live register. The respondents did not consider the applicants for the Group D vacancies as per the Railway Board instructions. Further as per Railway Board orders circulated vide SI Circular no 48 of 2008, Licensed Porters between the age of 18 & 50 years are to be appointed as Gangman on fulfilling certain terms and conditions as a one-time measure. The Respondents considering the case of licensed porters ignoring the claim of the ex casual labourers on rolls is arbitrary and discriminatory. The respondents have through different notifications proceeded to fill up 12,781 vacancies in Group D from open market in 2010 & 2012 against the Railway Board orders communicated vide lr. dt 23.12.2002.

4. The contention of the respondents is that the upper age limit fixed by the Railway Board lr dt 20.9.2001 is 40 years and accordingly 5 candidates were absorbed and the others were rejected as their age was beyond 40 years. Para 2006 of IREM -1 states that the DRM may exercise powers to grant age relaxation but such powers have to be exercised as per cited Railway Board orders dt 20.9.2001. In W.P no 6537 of 2006 it was observed by the Honourable High Court that 5 eligible respondents were considered and that in regard to others they were found to be ineligible. The respondents state that they have dispensed with engaging casual labour except when there is dire necessity.

5. Heard the learned counsel and perused the relevant records.

6. It is established by the records on file that the applicants were enrolled as casual labourers within the prescribed age limit. Annexure A-1 stands testimony to the same. This was not disputed by the Respondents. The Respondents have admitted that the applicants were eligible in all other respects except for the age.

The Railway Board Ir dt 23.12.2002 stipulated that Group D vacancies are to be filled only after exhausting the scope to absorb casual labour on the roll and the ex casual labour on live register and the supplementary live register. Nearly 12,781 Group D vacancies were advertised to be filled up over the years when the issue of absorption of the applicants was being dealt by the respondents . In other words there was work and vacancies available to absorb the applicants. Clause (iii) of Para 2006 of IREM which is statutory in nature, states that “ As long as it is established that a casual labour has been enrolled within the prescribed age limit, relaxation in upper age limit at the time of actual absorption should be automatic and guided by this factor. ” Therefore any executive order issued contravening this statutory rule is invalid. Hence the Railway Board order dt 20.9.2001 prescribing the upper age limit of 40 years is ultra vires as it violates clause (iii) of para 2006 of IREM. Therefore quoting this rule and rejecting the claim of the applicant is irregular. Moreover, among the 15 applicants the respondents have selected 5 of them and rejected the rest based on age condition which ought not have been applied as per clause (iii) of Para 2006. As a result the applicants were discriminated by wrong application of an executive instruction dt 20.9.2001 against the statutory rule under para 2006 of IREM. Even the Railway Board instructions vide Ir dt 23.12.2002 to absorb casual labour/ex casual labour before going to the open market has been infringed by the respondents. Appointing licensed porters to regular vacancies when the applicants were entitled for absorption ignoring their legitimate claim is again discriminative. Work being there and vacancies available as per facts stated, yet not considering the applicants for absorption is unfair to say the least although they were eligible as explained above. Therefore in sum and substance, the action of the respondents is irregular, arbitrary and discriminative as it

violates the fundamental rule on the subject and has favoured a few over the others . Therefore the OA fully succeeds.

7. Hence the respondents are directed to consider :

i ) to absorb the applicants in Group D posts as per clause (iii) of para 2006 and Railway Board letter dt 23.12.2002, if they have not crossed the prescribed superannuation age as on date of implementing this order.

ii) to absorb the applicants on a notional basis from the date five other similarly placed persons were absorbed by the respondents.

iii) to fix the pay and allowances of the applicants based on clause (ii) above and extend consequential benefits thereof.

iv) No back wages need to be paid. They shall be entitled to draw pay and allowance as per clause (iii) above from the date they join the Group D Post

v) Time permitted to implement the order is 3 months from the date of receipt of this order

vi) No order to costs.

**(SWARUP KUMAR MISHRA)**  
**MEMBER (JUDL.)**

**(B.V. SUDHAKAR)**  
**MEMBER (ADMN.)**

Dated, the 30<sup>th</sup> day of October, 2018

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