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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00510/2018

Wednesday, this the 27th day of March, 2019

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

1. Shri B.Christudas,
Aged 60 years,
S/o Bhanu Nadar,
Retired Track Maintainer,
Trivandrum Division,
Southern Railway,
Residing at Kavikuzhi,
Meleputhenveedu,
Ottasekharamangalam,
Neyyattinkara,
Trivandrum.
2. J.Vijayakumar,
Aged 60 years,
S/o Joseph,
Retired Track Maintainer,
Trivandrum Division,
Southern Railway,
Residing at Sree Padmanabha Thoppu Veedu,
Tamalam, Pujapura,
Trivandrum.Applicants

(By Advocate M/s.Varkey and Martin)

V e r s u s

1. Union of India,
Represented by
General Manager,
South Railway,
Park Town, Chennai-600 003.

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2. The Senior Divisional Personnel Officer,
South Railway.
Trivandrum Division,
Trivandrum – 14.Respondents

(By Advocate Mr. Thomas Mathew Nellimootttil for Respondents)

This application having been heard on 21st March, 2019, the Tribunal on 27th March, 2019 delivered the following :

ORDER

OA No.510/2018 is filed by Shri B.Christudas and J.Vijayakumar, both retired Track Maintainers, Trivandrum Division of Southern Railway. Through this OA they seek a declaration that they are eligible to be extended the benefits granted to the applicant in OA No.82 of 2009 and other connected cases. This would mean that they are to be regularised from 03.11.2003 and reckoning the service from 2003 to their date of retirement, qualifying for pensionary benefits under Statutory Pension Scheme. The reliefs sought in the OA are as follows:

- I) Declare that the applicants are deemed to be absorbed with effect from 03.11.2003 in railways and the period from that date is eligible to be reckoned as qualifying service for pension and other retirement benefits with all consequential benefits.
- II) Direct the respondents to grant the applicants the benefits of absorption from the date of such absorption of persons who were lower down in the Live Register maintained for the purpose of absorption and direct further to grant all consequential benefits arising there from.
- III) Pass such other orders or directions as deemed fit.

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2. The applicants had been initially engaged in Railways as Casual Labourers in the month of January, 1979 and at the time of termination of their casual service both had put in more than 700 days of duty and based on the length of casual service they were included in the live register at Sl.Nos.2045 and 2087 respectively. The live register had been maintained in pursuance to the directions of the Hon'ble Supreme Court in the case of **Inder Pal Yadav**, considering the question of retrenched casual labourers being absorbed in the service.

3. The applicants state that when their turn for absorption was reached in 2003 , they were not considered for absorption on the ground that they had crossed the upper age limit. The action of the respondents in prescribing maximum age for consideration of retrenched casual labourers for absorption was interdicted by this Tribunal in OA No.386/2005 as unsustainable. The applicants approached this Tribunal by filing OA No.391/2007 which was allowed by order dated 15.10.2007 directing the respondents to consider the applicants' case for absorption without applying age restriction. A copy of the order is at Annexure A1.

4. In pursuance to Annexure A1 order both applicants were absorbed as Trackman in 2011 and 2008 respectively and they retired from service on 30.11.2017 and 30.09.2017 respectively. For the reasons that the applicants were absorbed in Railways only after 2004, the respondents refused to

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include them in the Statutory Pension Scheme. The applicants are aggrieved by this and point out that they ought to have been absorbed in the year 2003 itself for the reason that many of their juniors got this benefit. Similarly placed persons approached this Tribunal through OA No.82 of 2009 seeking the benefits of absorption on par with their juniors particularly one Shri Viswanathan. This OA as well as other connected OAs were all allowed. The respondents took up the matter in the Hon'ble High Court of Kerala and the Hon'ble High Court by common order dated 21.12.2016 dismissed OP(CAT) No.30/2016 making the following observations:

21. in all the above cases, except O.P. (CAT) 45 of 2016, the applicants were stated as seniors to the person by name Viswanathan (in whose case, the benefit was ordered to be given by the Tribunal as per the verdict in O.A.615 of 2004 (Ext.P6 in W.P.(C)23757 of 2010) and even according to the Department, Viswanathan, by virtue of placement in the merged list placed at Sl.No.2134, was entitled to be regularised from 3.11.2003. In the case of the applicant in O.P(CAT) 45 of 2016, the applicant was junior to Viswanathan. But the fact remains that he was also called for considering regularisation in the year 2003 itself, but was denied the benefit, stating that he had already crossed the age limit. As the age factor has been rightly intercepted, he is also entitled to be treated as regularized in 2003. To have uniformity in all the matters, we find it appropriate to reckon 03.11.2003 as the date for regularisation in service (the date on which actual regularisation could have been given to Viswanathan). We also make it clear that, such date of regularisation will be only for the purpose of reckoning the 'qualifying service' for determining the eligibility for getting pension under the CCS (Pension) Rules 1972 and it will not result in payment of any arrears or such other monetary benefits, either towards salary or pension or such other heads. The actual pension and terminal benefits payable will depend upon the actual salary drawn by the applicants at the relevant time. The Writ Petitions and Original petitions are allowed in part. No cost.

5. It is affirmed that Shri Vishwanathan referred to in the judgment of the Hon'ble High Court has less number of days of service than the applicants

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and his position in the live register is only at Sl.No.2134. The applicants seek similar treatment and a declaration that they were deemed to have been absorbed with effect from 03.11.2003. They also seek that the period from 03.11.2003 till their retirement on superannuation be treated as qualifying service for pensionary benefits. They have taken up their demand through representations before the second respondent, but this has been to no avail with the respondents maintaining that since they were absorbed only after 2004, they were not entitled for retirement benefits and pension under Railway Service (Pension) rules.

6. In the reply statement filed on behalf of the respondents the overall facts pointed out are not disputed. The primary ground on which they counter the demands made in the OA is that the applicants had not challenged the New Pension Scheme and the applicants cannot make a prayer to grant pension under Old Pension Scheme without challenging the implementation of the New Pension Scheme, as per which those who have joined the Government service after 01.01.2004 are included under New Pension Scheme. They have called to their assistance various judicial orders wherein the principle of challenge has been accepted as necessary when an associated benefit is pursued.

7. We have heard Shri Martin on behalf of the applicant and Shri Thomas Mathew Nellimoottil on behalf of the respondents. As has been maintained

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by the applicants in the OA, the case is squarely covered by the orders of this Tribunal which has been confirmed by the Hon'ble High Court in OP (CAT) No.30/2016. Therein the Hon'ble High Court had held that the applicants in that case had been eligible for absorption on the ground that one Shri Viswanathan who had been placed at Sl.No.2134 had been absorbed. The same analogy would apply in the case of the applicants in this OA. The applicants here were present in live register at Sl.No.2045 and 2087 respectively, whereas Shri Viswanathan referred to in the Hon'ble High Court's order was at Sl.No.2134. The contentions made by the respondents to the contrary are not found valid. The OA is allowed. All the reliefs sought are to be granted to the applicants and the orders to this effect issued within 60 days from the date of receipt of a copy of this order. No costs.

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

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List of Annexures in O.A. No.180/00510/2018

1. **Annexure A1** – True copy of the order passed by this Hon'ble Tribunal in OA No.391 of 2007 dated 15.10.2007.
2. **Annexure A2** – True copy of the service certificate issued to the 1st applicant
3. **Annexure A3** – True copy of the service certificate issued to the 2nd applicant.
4. **Annexure R1** – True copy of the Railway Board's letter No.F(E)III/2003/PN1/24[RBE No.225/2003] dated 31.12.2003.
5. **Annexure A4** – True copy of the memorandum bearing No.V/P.407/I/CL/Engg./Court Cases dated 20.03.2018 issued by the second respondent.
