

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Friday, this the 16<sup>th</sup> day of August, 2019**

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

**(By Advocate Mr.Martin G.Thottan)**

1. The Union of India,  
represented by the General Manager,  
South Railway, Park Town,  
Chennai – 600 003.
2. The Senior Divisional Personnel Officer,  
South Railway,  
Trivandrum Division,  
Trivandrum – 14.

....Respondents

This application having been heard on 14<sup>th</sup> August, 2019, the Tribunal on 16<sup>th</sup> August, 2019 delivered the following :

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**ORDER**

OA No.1035/2018 is filed by Shri J.Sreekumaran Nair, retired Drainage Khalasi, Trivandrum Division, Southern Railway. Through this OA the applicant seeks a declaration that he is eligible to be extended the benefits granted to the applicants in OA No.82/2009 and other connected cases and which were affirmed by the Hon'ble High Court of Kerala. This would mean that the applicant is to be regularised from 03.11.2003 and reckoning the service from 2003 to his date of retirement as qualifying for pensionary benefits under the Statutory Pension Scheme. The reliefs sought in the OA are as follows:

- I) Declare that the applicant is deemed to be asorbed with effect from 03.11.2003 in Railways and the period from that date of his retirement, is eligible to be reckoned as qualifying service for pension and other retirement benefits and to direct the respondents to disburse the retirement benefits including monthly pension, with all consequential benefits.
- II) Direct the respondent to grant the applicant 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) Declare that the applicant is entitled to be included in the old pension scheme provided under Railway Service Pension Rules, prevalent prior to 01.01.2004 and to direct the respondents accordingly with all consequential benefits.
- IV) Pass such other orders or directions as deemed fit.

2. The applicant was initially engaged in Railways as Casual Labourer in the year 1979 and was included in the Live Register at Sl.No.2713 based on the total length of casual service of 171 days, though at the time of termination

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of the applicant's service the period was more than 629 days. When the applicant's turn reached for regularisation, he was not considered on the ground that he was over-aged. The applicant submits that his position in the Live Register would have been at Sl.No.2112, if his entire casual service was reckoned and he would have been considered earlier for regularisation along with his juniors and the question of over-age would not have occurred.

3. The applicant approached this Tribunal in OA No.852/2016 seeking to reckon the entire casual service and to assign correct position in the Live Register. The OA was allowed declaring that the applicant was entitled to be considered for regularisation treating his total casual labour service as 629 days. However, the applicant was not granted the regularisation on the ground of not having the medical classification B-Two required for the post of Gangman. The applicant again approached this Tribunal in OA No.394/2009 seeking a direction to the respondents to consider him for a post which required lower medical classification. The said OA was disposed of with a direction to the respondents to subject the applicant for re-medical examination and to offer a Group'D' post for which lower medical classification is required (Annexure A1). On non-consideration of the applicant even after the above order, the applicant again approached this Tribunal in OA No.107/2019 and was ultimately absorbed and appointed as a Temporary Drainage Khalasi (Annexue A2).

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4. In pursuance to Annexure A2 order the applicant joined service on 25.01.2012 and retired on 30.06.2018. For the reasons that the applicant was absorbed in Railways only after 2004, the respondents refused to include him in the Statutory Pension Scheme. The applicant is aggrieved by this and points out that he ought to have been absorbed in the year 2003 itself for the reason that many of his juniors had 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 Viswantathan. The 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 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.

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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 applicant and his position in the live register is only at Sl.No.2134. The applicant seeks similar treatment and a declaration that he was deemed to have been absorbed with effect from 03.11.2003 and that the period from 03.11.2003 till his retirement be treated as qualifying service for pensionary benefits. Though the applicant submitted a representation before the second respondent, the same has been to no avail with the respondents maintaining that since he was absorbed only after 2004, he is not entitled for retirement benefits and pension under Railway Service (Pension) Rules.

6. The respondents have filed their reply statement disputing the contentions raised in the OA. The primary ground on which they counter the demands made in the OA is that the applicant had not been a necessary party in OA No.82/2009 and in OP (CAT) 30/2016 for claiming the date of absorption with effect from 03.11.2003.

7. We have heard Shri Martin on behalf of the applicant and Shri Thomas Mathew Nellimoottil on behalf of the respondents. As maintained by the applicant in the OA, the case is squarely covered by the orders of this Tribunal which have been confirmed by the Hon'ble High Court in OP (CAT) No.30/2016. The contentions made by the respondents to the contrary are not found valid. The OA is allowed to the extent that his absorption is to

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be considered with effect from 03.11.2003. He would be entitled for pensionary benefits counting his service from that date. Orders to this effect are to be 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.180/01035/2018**

- 1. Annexure A1:** True copy of the Order passed by this Hon'ble Tribunal in OA No.394 of 2009 dated 06.08.2009.
  - 2. Annexure A2:** True copy of Office order No.12/2012/WP dated 23.01.2012.
  - 3. Annexure A3:** True copy of service certificate dated 30.06.2018 issued to the applicant.
  - 4. Annexure R1:** True copy of letter dated 27.08.2010 in compliance with OA No.107/2010.
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