

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/0005/2018

Friday, this the 16th day of August, 2019

CORAM:

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

Smt.Swornabai,
W/o late M.Wilson,
Aged 50 years, (Retd. Track Maintainer),
Office of the Section Engineer,
Permanent Way/Southern Railway/Thiruvananthapuram),
Residing at: Kuruthallvilai Veedu, Amsi,
Thengapattanam,
Kanyakumari District – 629 173.Applicant

(By Advocate Mr.T.C.Govindswamy)

Versus

1. The Union of India,
represented by the General Manager,
Southern Railway, Headquarters,
Park Town PO.,
Chennai – 600 003.
2. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 695 014.
3. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum – 695 014.

(By Advocate Mr.P.R.Sreejith, ACGSC for Respondents)

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

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ORDER

OA No.05/2018 is filed by late Shri M.Wilson, retired as Track Maintainer, Trivandrum Division of Southern Railway. Through this OA the applicant seeks a declaration that he is eligible to be extended the benefits granted to the applicant in OA No.784/2012 . This would mean that he is to be regularised from 03.11.2003 and reckoning the service from 2003 to his date of retirement, he would qualify for pensionary benefits under the Statutory Pension Scheme. The reliefs sought in the OA are as follows:

- (i) Declare that the refusal on the part of the respondents to grant the applicant the benefit of absorption on par with the applicants in Annexure A3 and A4 who were borne in the list of retrenched casual labourers, at least with effect from 03.11.2003 is arbitrary, discriminatory, contrary to law and hence, unconstitutional;
- (ii) Direct the respondents to grant the applicant the benefit of absorption as Trackman from the date of such absorption of the applicants in Annexures A3 and A4 and direct further to grant all consequential benefits arising there from, including monthly pension and all other retirement benefits, as if the applicant is covered under the pre-01.01.2004 pension rules.
- (iii) Award costs and incidental to this application;
- (iv) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

2. The applicant was borne in the list of retrenched casual labourers of Southern Railway, Trivandrum Division at Sl.No.2052. He had a total number of 674 days of casual service as on the date of his retrenchment. 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

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retrenched casual labourers being absorbed in the service.

3. The applicant states that when his turn for absorption was reached in 2003 , he was not considered for absorption on the ground that he had crossed the upper age limit. The applicant approached this Tribunal in OA No.491/2007, which was allowed. The applicant was absorbed by an order dated 19.12.2008 (Anenxure A1). The applicant belongs to OBC category.

4. The applicant submits that one Shri Vishwanathan, junior to applicant and many others, borne in the same list was absorbed in the year 2007, but later was shown to have been absorbed w.e.f. 1996. Similarly placed individuals approached this Tribunal in OA No.1032/2012 and OA No.784/2012 praying to be regularised on par with Shri Vishwanathan. The OAs were allowed holding that the applicants therein are entitled to be notionally regularised w.e.f. 03.11.2003 for the purpose of pension and other retirement benefits (Annexure A2 and A3). The order in OA No.784/2012 was upheld by the Hon'ble High Court in OP (CAT) No.138/2014 and connected cases (Annexure A4). The applicant submitted a representation praying for grant of the benefit of service from 03.11.2003, but this has been to no avail.

6. The respondents have filed their reply statement disputing the contentions raised in the OA. The primary ground on which they counter

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them is that the OA is barred by limitation. The respondents called to their assistance various judicial orders.

7. We have heard Shri T.C.Govindswamy, learned Counsel on behalf of the applicant and Shri P.R.Sreejith on behalf of the respondents. As has been maintained by the applicant 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 are eligible for absorption on the ground that Shri Viswanathan, who had been placed at Sl.No.2134 had been absorbed. The same analogy would apply in the case of the applicant in this OA. The applicant here was present in live register at Sl.No.2052, 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. The reliefs sought relating to fixation of his regularisation date as 03.11.2003 and allowing pensionary benefits with service commencing from that date are allowed. 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.180/0005/2018

- 1. Annexure A1:** True copy of the Order bearing No.V/P407/I/ECL/vol.XI (Pilot-I) dated 10.05.2010 issued by the third Respondent.
 - 2. Annexure A2:** True copy of Order in OA No..1032/2011 dated 31.07.2012, rendered by this Hon'ble Tribunal.
 - 3. Annexure A3:** True copy of order in OA No.784/2012 dated 10.02.2015 rendered by this Hon'ble Tribunal.
 - 4. Annexure A4:** True copy of the judgment in OP (CAT) No.138/2014 and connected cases dated 21.12.2016.
 - 5. Annexure A5:** True copy of the representation submitted by the applicant dated 06.05.2017, addressed to the 3rd respondent.
 - 6. Annexure MA1:** True copy of the Death Certificate bearing Registration No.D-201833-6043-000003 dated 19.01.2018.
 - 7. Annexure R1:** True copy of the Order dated 9th March 2006 in OA No.140/2006.
 - 8. Annexure R2:** True copy of the Annexure A2 representation of the applicant dated 24.01.2006 in OA No.140/2006.
 - 9. Annexure MA1 :** True copy of order bearing file no V/P 407/I/I/ECL/Vol.XI(Pilot-4) dated 19.12.2008.
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