

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00389/2019

Tuesday, this the 1st day of October, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

Anjaneyalu Parasa, Aged 34 years, S/o Rajaiah, Track Maintainer IV,
 Office of the Senior Section Engineer, Permanent Way, Southern railway,
 Alappuzha, residing at No.1-E, Railway Quarters, Haripad,
 (Ph. No.9020144992). **Applicant**

(By Advocate : M/s. Varkey & Martin)

V e r s u s

1. The Railway Board, Railway Bhavan, New Delhi – 110 001,
 represented by its Chairman,
2. The General Manager, South Railway, Park Town,
 Chennai – 600 003.
3. The Principal Chief Personnel Officer, Southern Railway,
 Park town P.O., Chennai – 600 003.
4. The Divisional Personnel Officer, South Railway,
 Trivandrum Division, Trivandrum-14.
5. The Senior Section Engineer (Permanent Way),
 Southern Railway, Alappuzha.
6. The Chairman, Railway Recruitment Cell, No.5,
 Dr.P.V.Cherian Crescent Road, Southern Railway, Egmore,
 Chennai – 600 008. **Respondents**

(By Advocate : Mr. Sunil Jacob Jose)

This application having been heard on 24.09.2019 the Tribunal on
 01.10.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

“I) Declare that the applicants are entitled for regularization w.e.f. The date of their appointment as Substitutes with all consequential benefits and direct the respondents accordingly.

II) Declare that the applicant is eligible to be considered for selection to the post of Junior Engineer/Permanent Way and Junior Engineer/TMO in level VI of 7th CPC pay matrix for which Annexure A6 notification was issued.

III) Direct the respondents to consider the applicant for selection in pursuant to Annexure A6 notification on the basis of the declaration sought above.

IV) Pass such other orders or directions as deemed fit.”

2. The brief facts of the case are that the applicant is presently working as a Substitute Track Maintainer IV. He is a Course Completed Act Apprentice, selected by RRB and engaged as a Substitute by order No.146/2009/WP dated 07.12.2009 under the Divisional Office, Southern Railway, Thiruvananthapuram. As his engagement was subject to a challenge in W.P. No. 8821 of 2007 pending before the Hon'ble High Court of Madras and OA No.632 of 2009 pending before the Madras Bench of this Tribunal, their engagement had been purely on provisional basis and subject to the final outcome of the cases referred to. The applicant is at Sl. No.24 in Annexure A1. The applicant enjoys temporary status by virtue of order dated 09.06.2010 issued by the 3rd Respondent. Therein the applicant is at Sl. No.13 at Annexure A2. The conditions in Annexure A1 are imposed because the selection of the applicant as Substitute along with 530 persons was challenged before the Madras Bench of the Tribunal in OA No. 520 of

2005. The Tribunal allowed the OA. In W.P. No. 8821 of 2007, taken up by the Railways before the Hon'ble High Court of Madras, permission was granted as an interim measure for appointment of the applicant as a Substitute and it was in the light of this, Annexure A1 order had been issued. However, the status of the personnel including that of the applicant continued as Substitute, with some persons filing SLP No.28709 of 2013 before the Hon'ble Supreme Court challenging the judgment in W.P. No. 8821 of 2007. Hon'ble Supreme Court was pleased to issue an interim direction in the said SLP ordering that "the Railways will maintain status quo with respect to the employment of the private respondents". The applicant submitted that the status quo has been ordered only with respect to the private respondents before the Hon'ble Supreme Court and the applicant is not one of them. Besides it is pointed out that similarly placed Course Completed Apprentices were regularised by the Integral Coach Factory which comes under the Railways, based on the approval of the Railway Board. Applicant who is exactly in the same position as 284 substitutes in Integral Coach Factory, is also eligible to get the similar treatment. In the meanwhile respondents have issued Annexure A6 notification for filling up the post of Junior Engineer/P.Way and Junior Engineer/TMO in level VI under General Departmental Competitive Examination. Applicant is having the educational qualification and is eligible to be considered for selection in pursuance to Annexure A6. An application was submitted by the applicant for considering his case. However, the respondents returned the same stating that since the applicant is not regularized he is not eligible to be considered for the selection in pursuance to Annexure A6. Aggrieved the

applicant has filed the present OA.

3. The applicant has sought an interim relief in the matter to allow him to participate in the selection, pursuance to Annexure A6 notification provisionally and subject to the outcome of the OA. However, this Tribunal vide order dated 1st August, 2019 declined the prayer for interim relief as sought for by the applicant.

4. Notices were issued to the respondents. They entered appearance through Shri Sunil Jacob Jose who filed a reply statement in the matter contending that the applicant is working as a Substitute Track Maintainer and is not a regular employee. The respondents have issued Annexure A6 notification dated 6.5.2019 for General Departmental Competitive Examination for filling up of Junior Engineer/P.Way and Junior Engineer/TMO. The notification specifically provided that all serving regular employees in level 6 and below of 7th CPC Pay Matrix, who possess the prescribed educational qualification can apply for the post. In the present case it is an admitted fact that the applicant is working as a Substitute Track Maintainer-IV in the Engineering Department of Trivandrum Division. Therefore, applicant is not eligible to apply pursuant to Annexure A6 notification. Moreover the applicant was appointed vide order dated 7.12.2009 with specific conditions therein that the engagement of the applicant is purely provisional and subject to the final outcome of WP No. 8821 of 2007 pending before the Hon'ble High Court of Madras and OA No. 632 of 2009 pending before the Madras Bench of the Tribunal. The

respondents also submitted that the judgment dated 6.8.2013 in WP No. 8821 of 2007 of the Hon'ble High Court of Madras has been challenged before the Hon'ble Supreme Court through SLP (Civil) No. 28709 of 2013 and the matter is pending therein. Hence, the regularization of the applicant will materialize depending on the final outcome of the SLP pending before the Apex Court. Therefore, the respondents pray for dismissing the OA.

5. Heard Mr. Martin G. Thottan, learned counsel for the applicant and Mr. Sunil Jacob Jose, learned counsel for the respondents at length. Perused the record.

6. The applicant has sought relief claiming regularization from the date of his appointment as Substitute Trackman Maintainer with all consequential benefits as in the case of similarly situated persons of Integral Coach Factory has been done. Some of the similarly situated persons approached the Madras Bench of the Tribunal wherein this Tribunal allowed the case of the applicants therein for regularization of their service as Trackman. The same was challenged by the respondents before the Hon'ble High Court of Madras. The decision of the Tribunal was upheld by the Hon'ble High Court of Madras and thereafter the matter went up to the Hon'ble Supreme Court wherein the Hon'ble Supreme Court observed as under:

“Taken on Board.

Heard Mr. Raju Ramachandran, learned senior counsel in support of this special leave petition.

Issue notice returnable in four weeks. Liberty is granted to the petitioner to serve the private respondents through railways.

The Railways will maintain status quo with respect to the employment of private respondents.”

7. The private respondents are similarly situated like the applicant herein who is a Substitute Track Maintainer. The applicant's contention before this Tribunal is that since he was not a party in the above matter pending before the Hon'ble apex court, the respondents may regularize his service because the status quo granted is applicable only to the parties concerned. The applicant has also contended that the respondents have also taken the opinion of the Additional Solicitor General and he has also opined that since Substitutes in ICF unit are not party to the above proceedings, the respondents may proceed further in regularizing the services of the Substitutes therein. But the fact remains that the order passed by this Tribunal and upheld by the Hon'ble High Court of Madras has been questioned before the Hon'ble Supreme Court and the Hon'ble Supreme Court has granted a status quo order as regards to the Substitute Track Maintainer, meaning thereby that the matter is subjudice before the Hon'ble Supreme Court and in case the Hon'ble Supreme Court take a decision and set aside the order passed by this Tribunal upheld by the Hon'ble Madras High Court, then the applicant may not get his present post/status being from the same selection in which 92 private respondents Substitute Track Maintainer are party. Thus, in the interest of justice at present we need not interfere in the matter unless and until the order passed by the the Madras Bench of this Tribunal upheld by the Hon'ble High Court of Madras is

confirmed by the Hon'ble apex court also. Moreover, the applicant is similarly situated to the private respondents who are party in the SLP. The entire process of selection has been questioned before the Hon'ble Supreme Court. The applicant also sought that he may be permitted to appear in the selection pursuant to Annexure A6 notification. Since the applicant is lacking regular service as enumerated in the Recruitment Rules, we are not inclined to direct the respondents to consider the applicant even for provisional appointment.

8. In view of the above the Original Application is disposed of. No order as to costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

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

“SA”

Original Application No. 180/00389/2019**APPLICANT'S ANNEXURES**

Annexure A1- True copy of the office order bearing No.146/2009/WP dated 07.12.2009.

Annexure A2- True copy of the order bearing No.V/P.407/I/PW/ALP dated 09.06.2010.

Annexure A3- True copy of the interim order dated 13.09.2013 in SLP [C] No.28709 of 2013 passed by the Hon'ble Supreme Court.

Annexure A4- True copy of the Office order No.PB/55/KH/Sub dated 24.12.2018.

Annexure A5- True copy of letter bearing No.E(MPP)/2010/6/8 dated 24.12.2018.

Annexure A6- True copy of notification No.P(S) 608/I/4/P.Way/GDCE/Vol.II dated 06.05.2019.

Annexure A7- True copy of application dated 15.05.2019 submitted by the applicant.

RESPONDENTS' ANNEXURES

Nil

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