

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.
ORIGINAL APPLICATION NO. 572/2016

Date of Decision: 15.01.2020

CORAM:- R. VIJAYKUMAR, MEMBER(A)

RAVINDER KAUR, MEMBER (J)

1. Pradeep S. Padvekar, Aged 36 yrs.,
Occu- clerk, R/a-7, Anusaya Niwas,
Gavdevi Road, Near Municipal School,
Tembi pada, Bhandup(W), Mumbai.
2. Manoj M. Gangurde, Aged 41 yers.,
Occu. Cashier/Godownkeeper
Panchdhara Apartment, C- wing - 401,
Thankarpada, Agra Road, Kalyan (W),
Thane- 421301
3. Deepak S. Jadhav, Aged 44 yrs., Occu. Issuer,
Rameshwadi, Tata colony, Shardha Bldg.
1st floor, Room No. 8,
Badalapur, Thane

All the 3 Applicants having office
Address at - The Mumbai CST
Central Railway Employees Consumer
Co - op. Society Ltd., Mumbai - 400001

...Applicant

(By Advocate Shri M. S. Khati)

Versus

1. General Manager
Central Railway Headquarter
Mumbai -400001
2. The Mumbai CST Central Railway
Employees Consumer Co op.
Society Ltd., Mumbai - 400001
3. Union Of India Chairman Raiyboard
through Rail Bhavan
Ministry of Railways, New Delhi. 110001

...Respondents

(By Advocate Shri V. S. Masurkar)

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ORDER (ORAL)

PER: R. Vijaykumar, Member (A)

Heard learned counsels for both the parties at length. The applicants are stated to have been employed with a cooperative society, The Mumbai CST Central Railway Employees Consumers Cooperative Society Ltd, which is considered a quasi-organization connected with the Railways and on this basis, they claim the benefit of the circular issued by the RBE No. 103/2000 dated 30.05.2000 by which one-time relaxation was granted to such staff who were employed in these offices as on 10.06.1997 and who were on roll continuously for a period of at least three years prior to that date and continued to be on roll on the date of circular and subject to the fulfilment of prescribed educational qualifications required for recruitment to Group 'D' posts. This circular was amended by the impugned order in RBE No. 56/2006 dated 03.05.2006 (Annex A-1) by deleting the requirement of three years service prior to 10.06.1997 but continued to require such persons to have been on roll on 10.06.1997 and thereafter on the date of orders, subject to other conditions specified. The applicants were considered in the first instance based on the

recommendations of the Society in orders of the respondents dated 12.05.2009 (Annex A-4) which was addressed to the Society and gave the following reasons for rejecting the three applicants who are now before us in this case:

Sr. No.	Name(S/Shri)	Name of the Q.A. Org.	Reason for rejection
4.	Deepak S. Jadhav	Consumer Society/CSTM	Date of appointment as per pass record is 21/4/98 i.e. after the cut off date i.e. 10/6/97. Hence not considered.
7.	Manoj M. Gangurde	-do	Date of appointment as per pass record is 01/6/03 i.e. after the cut off date i.e. 10/6/97. Hence not considered.
9.	Pradip S. Padvekar	-do-	Date of appointment as per pass record is 01/6/03 i.e. after the cut off date i.e. 10/6/97. Hence not considered.

2. The applicants appear to have protested this decision and a further letter was sent by the society on 22.05.2009 (Annex A-5) requesting reconsideration and again on 02.09.2009 (Annex A-6) with details of their first PF deduction that commenced in April, 1999. The applicants have produced a subsequent order dated 29.07.2014. The applicants also apparently approached the respondents through the Central Railway Mazdoor Sangh to which a reply had gone from the respondents

on 12.06.2012 in respect of 15 names and two names were referred back for consideration. Another 9 names which include the present three applicants were then considered in the letter of the respondents dated 29.07.2013 (Annex A-8) and the reasons for rejection by the Consideration Committee communicated to Central Railway Mazdoor Sangh which is extracted as follow:

Sr. No.	Name	Date of Birth	Date of appointment in Q.A. office	Reason for non-consideration by the Scrutiny Committee
4	Deepak S. Jadhav	19/7/1971	22/7/1996	Date of appointment ambiguous.
7	Manoj M. Gangurde	12/10/1974	26/11/1996	Date of appointment ambiguous.
9	Pradip S. Padvekar	18/12/1978	29/1/1997	Date of appointment ambiguous.

3. Subsequent to this, the Central Railway Mazdoor Sangh again represented and detailed reasons were provided by the respondents on 18.02.2014 (Annex A-2) giving reasons as below:

Sr. No.	Name of the quasi staff and name of the quasi organization	Date of Birth	Date of engagement in the Q.A. Office as per the Secretary of Q.A. Office	Date of appt. Given on WI inspection	Reasons for non-consideration
4	Deepak S. Jadhav	19/7/1971	22/7/1996	22/7/96(as per pass register)	There is variation in the date of engagement. Hence the appointment is ambiguous.
7	Manoj M. Gangurde	12/10/1974	26/11/1996	1/6/2003(as per pass register)	There is variation in the date of

					engagement. Hence the appointment is ambiguous.
9	Pradip Padvekar	S. 18/12/1978	29/1/1997	1/6/2003(as per pass register)	There is variation in the date of engagement. Hence the appointment is ambiguous.

4. From the above relation of events, it is quite clear that the final view of the respondents was communicated to the applicants in the year 2009 and there were later representations of the Society and still later representations were made through the Central Railways Mazdoor Sangh wherein the respondents have only reiterated their views by giving detailed reasons supporting their decision. Therefore, the relevant date for deciding limitation would start from 12.05.2009 or thereabouts when the first orders of the respondents were communicated to the applicants through the Society. It is also the law laid down by the Hon'ble Apex Court in **S.S. Rathore vs State Of Madhya Pradesh**, 1990 AIR 1, that repeated representations do not extend the period of limitation and therefore, this OA is clearly barred on the aspect of delay. However, considering the fact that the present applicants are labourers who are allegedly employed with the society and through them, with the Railways, they were heard on grounds of sympathy and any evidence that may be available

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to them has been considered for the purpose of passing orders in this OA.

5. Learned counsel for the applicants has not produced any documents to show that the applicants were actually employed with the said society or with the Railways as on 10.06.1997 or that they were employed with any quasi-administrative or other organization of the respondents before that date and that they continued on that date. Learned counsel for applicant concedes that Provident Fund deduction only commenced from April, 1999 and therefore this document does not help the case of the applicant. He also produces a Muster Roll from July, 1996 to April 1997 which would make due claim that that the applicants were working with the Cooperative Society concerned. However, it is also quite apparent that this is a period of barely one year. The applicants then cannot get the benefit of the Circular of the year 2000 which requires period of three years of being on roll with such quasi organization with the respondents. They are, in particular, also unable to produce evidence that they were on roll on 10.06.1997. Learned counsel for applicant was invited to provide any further evidence in support of his case but he was unable to do so. In para 2

of MA No. 619/2016 for condonation of delay, the applicants stated as follows:

"2. The applicants states that they were the employee of the Mumbai Chatrapati Shivaji Terminus Central Railway Employees Consumers Co-operative Society Ltd. since before 10th June 1997 due to the irregularities in the conducts of the society appears by the Managing Committee of the Society, the Deputy Registrar has appointed official liquidator in the matter for the conduct of the said society and thereafter conducting Agreement was enter with the third party by name and style as M/s.Shruti Enterprises and the Applicants used to receive their salary through the said Conductor even during the tenure of conducting agreement."

6. In reply to this, the respondents referred to para 4 to 6 of their reply(pg 93) that this constitutes an admission by the applicants that they were receiving their salary through Shruti Enterprises and that there was no employer-employee relationship between the cooperative society and the applicants. Since Shruti Enterprises was appointed by the Society itself as a contractor and applicants were drawing their salary from this contractor, they were not governed by the scheme of 03.05.2006 which applies to directly employed staff of quasi-organizations of the societies and not for the contractors appointed by such societies.

7. In rejoinder to this reply, the applicants have recorded as follows:

"11. With reference to paras. 3 to 6 of the reply of the Respondent No. 1 and 3 the Applicants say and submits that it is the matter of decision on the original application hence, need not require any comment at the stage of hearing on the above delay condonation application of the Applicants."

8. Pleadings and records have been carefully examined. Learned counsels have been heard at length and applicable laws have been carefully considered.

9. There is a burden on the applicants to prove their case that they were on roll on 10.06.1997 in terms of the circular issued by the respondents in 2006. They have not produced any satisfactory or credible evidence. They were clearly not falling within the benefit of the circular of the year 2000 which requires three years of service prior to 1997 and if they wanted benefit of circular of the year 2006, they should have provided some evidence of their being on the rolls of the said society. However, no such evidence has been provided by the applicants to prove their case.

10. Therefore, by the submissions made in the MA and the rebutted replies of the respondents that the applicants were perhaps employed by the contractor of the society and had no direct relationship with the respondents nor could they seek a link between their employment and the respondents through the circular of the year 2000 and 2006.

11. In the circumstances, this OA is devoid of merits and is accordingly dismissed without any order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)