

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 93 of 2009

MONDAY, this the 3RD day of AUG, 2009

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

S. Abdul Salam, aged 58 years, S/o. Syed Mohammed,
 Residing at: "Ashifa Manzil", Ummuni, Kallekulangara.P.O.,
 Palakkad 678 009.

..... **Applicant**

(By Advocate – Mr. TCG Swamy)

V e r s u s

1. Union of India represented by The Secretary to the Government of India, Ministry of Railways, (Railway Board), New Delhi.
2. The General Manager, Southern Railway, Headquarters Office, Park Town P.O., Chennai-3.
3. The Chief Personnel Officer, Southern Railway, Headquarters Office, Park Town P.O., Chennai-3.
4. The Senior Divisional Personnel Officer, Southern Railway, Palakkad Division, Palakkad. **Respondents**

(By Advocate – Mr. Sunil Jose)


The application having been heard on 28.7.2009, the Tribunal on 3-8-09 delivered the following:

ORDER

By Hon'ble Dr. K.B.S. Rajan, Judicial Member -

The applicant was under the service of Southern Railway Employees' Consumer Co-operative Society Limited, Palakkad. He has superannuated on attaining 58 years of age on 31.10.2007. Vide Annexure A-1 RBE No. 103/2000 as a one time measure staff working in the Consumer Co-

operative Society were to be absorbed in the Railways provided they were on the rolls continuously for a period of at least three years as on 10.6.1997 and was still on rolls as on the date of said order, subject, of course to the fulfillment of the prescribed educational qualifications for recruitment to Group-D post. The said order also stipulated that such absorption should be resorted to only after exhausting the list of ex-casual labours borne on the live casual labour register/supplementary live casual labour register. It is stated that 50 posts were identified to be filled up by absorbing such employees from the Co-operative Society and in so far as Palakkad Division is concerned vide Annexure A-2, direction was given to as many as five employees of the Consumer Co-operative Society including the applicant to attend the Railway Institute, Palakkad on 24.2.2006 for verification of certificate regarding date of birth etc. As some more names were to be added and some more particulars were to be provided, Annexure A-2 was superseded by Annexure A-3 order dated 14.2.2006. Subsequently the Personnel Branch of Divisional Office, Palakkad on 17.10.2008 advised the applicant to call on their office on 28.10.2008 for medical examination in connection with the applicant's absorption to Group-D service in Palakkad with certain documents. This was complied with. Annexure A-5 is a covering letter asking the Managers of Consumer Co-operative Societies Limited, Palakkad, Calcutta and Mangalore to verify the particulars of individuals named therein which included that the individuals were on the rolls for a period of at least three years as on 10.6.1997 and were still on the rolls as on date. However, the applicant was not sent for medical examination on the ground that the applicant was not on the rolls on that



date (20.10.2008). He has therefore, made a representation vide Annexure A-6 dated 28.10.2008. By this time, junior to the applicant in the Co-operative Society was absorbed vide Annexure A-7.

2. The applicant has claimed the following relief:

"(i) Direct the respondents to regularly absorb the applicant as a Group 'D' employee in the Railways, at par with those who were included in Annexure A3 and direct further to grant all consequential benefits including arrears of pay and allowances arising there from;

(ii) Award costs of and incidental to this Application;

(iii) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

3. Respondents have contested the OA. They have stated that absorption could be possible only of those workers of the Co-operative Stores who were at the very material point of time on the rolls of the Society. Even though action was initiated as early as in 2006, since for final absorption, for medical examination etc. communication was sent only in October, 2008, the applicant as on that date by that time having superannuated is not eligible to be absorbed. In addition, the respondents have stated as under:-

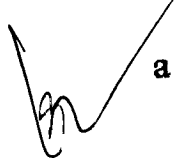
"4. It is submitted that the applicant has no locus standi to invoke the jurisdiction of this Hon'ble Tribunal. In th is connection it is pertinent to submit that Southern Railway Employees Co-operative Stores Workers Union has earlier filed Writ Petition No. 13002/1985 before the Hon'ble Supreme Court under Article 32 of the Constitution which was dismissed holding that the Writ Petition under Article 32 will not lie, but Petitioners may pursue appropriate remedy under the industrial legislation. Further the All India Railway Institutes Employee's Association had filed Writ Petition No. 1389/1987 before the Hon'ble Supreme Court, praying for grant of status of Railway Servants to the Staff engaged in the Railway Institutes and clubs, relying the judgment of the Hon'ble Supreme Court in the case of Non-statutory canteen employees. The said Petition was also dismissed by the Hon'ble Supreme Court on 27.2.1990 on the ground that there were material

difference between the Canteen run by the Railway establishment and Railway Institutes and Clubs. In view of the above it is submitted that this Hon'ble Tribunal has no jurisdiction to entertain the instant Original Application.

5. Railway Board upon considering the demand that has been raised by both the recognized Staff Federations that those staff of Quasi-Administrative Offices/Organizations who were working in these offices as on 10.6.1997 should be considered for absorption in Railway service, had issued an order considering absorption of only those staff of Quasi-Administrative Offices/Organizations who were on roll continuously for a period of at least three years as on 10.6.1997, and are still on roll, subject to fulfillment of prescribed educational qualification required for recruitment to Group 'D' posts. Such staff should have been engaged within the prescribed age limit. Such absorption should be resorted to only after exhausting the list of ex-Casual Labour borne on the Live Casual Labour Registers/Supplementary Live Casual Labour Registers. The Units/Bodies whose staff are proposed to be absorbed in this manner and their total number should however be first intimated to the Board and the process should be undertaken only after Board's clearance. Proposals sent to the Board for such clearance should have the personal approval of the General Manager."

4. The applicant has filed the rejoinder stating that the condition to be fulfilled is only three years' continuous service in the Co-operative Society coupled with the individual being still on the rolls as on 10.6.1997. In the case of the applicant these two conditions are fulfilled. Stipulating one more condition in October, 2008 that for absorption such individual should be on rolls would mean a stipulation not catered for in the earlier conditions. This is illegal and the applicant ought to have been absorbed in the Railways.


5. Counsel for the applicant submitted the above facts and reiterated that when the two main conditions originally stipulated got fulfilled, there is no reason why should not the applicant be considered for absorption as there is a concession available to Consumer Co-operative Stores employees of



Railways.

6. Counsel for the respondents submitted that the Consumer Co-operative Centre in Chennai, the same was closed in 2003 and nobody could be appointed as no one was "still on the rolls" of the Society at the time when consideration for absorption was made. As such the similar result would occur in case where the individuals, by virtue of their superannuation on attaining the age of 58 years. In view of the same the applicant has no case.

7. Arguments were heard and documents perused. Annexure A-1 order is of 1998 and aim of that order was to absorb the Consumer Co-operative Society Employees/Workers on fulfillment of the two conditions specified above. In addition availability of vacancies after exhausting of the Casual Labours enlisted in the live casual labour register. 50 posts have been stated to be identified and it is not known whether these 50 posts were identified at one go or in phases. If the post wherein the applicant could be accommodated was identified prior to his superannuation then for the time taken to process the case, the applicant cannot be penalized; if his case for absorption is rejected on account of such superannuation, that will amount to miscarriage of justice. If, on the other hand, the very identification of vacancy against which the applicant would have been absorbed has been made after the date of superannuation of the applicant from the Co-operative Society, the applicant cannot claim absorption, though he fulfill the two conditions. For, the mere fulfillment of twin conditions of three years service and still on roll as on 10.6.1997 alone would not suffice.



There must be vacancy available to absorb the applicant. Records do not reflect as to the period to which the vacancies pertained. It is for the department to verify the same and see that the identification of vacancies could be made prior to November, 2007 when the applicant superannuated, the applicant shall be considered for absorption subject to fulfillment of medical standards, educational qualification, etc., notwithstanding the fact that he has superannuated from Co-operative society. If on the other hand the identification of posts itself was taken after the retirement of the applicant, the applicant's case has to be rejected.

8. In view of the above, the respondents are directed to undertake an exercise of ascertaining the date of availability of the vacancy against which the applicant could have been absorbed and if that vacancy pertains to the period anterior to the date of retirement of the applicant, then the respondents shall pass suitable orders for absorption of the applicant. In that case he would be entitled to notional pay fixation, actual being only from the date he assumes higher responsibilities, as age of retirement then be 60 years as per other Railway employees. If on the other hand the identification of the vacancy is posterior to the superannuation of the applicant, he may be accordingly informed rejecting his claim for absorption. This drill may be performed within a period of two months so that the applicant could serve at least for a month in case he is entitled for absorption. No costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER
"SA"



(K.B.S. RAJAN)
JUDICIAL MEMBER