

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 136/2006

Thursday, this the 14th day of September, 2006.

CORAM:

**HON'BLE MR JUSTICE G SIVARAJAN, VICE CHAIRMAN
HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

N.Janaki,
Packer,
Southern Railway Employees Consumer
Co-operative Society Ltd. No.411,
Palakkad. Applicant

By Advocate Mr TC Govindaswamy

v.

1. Union of India represented by
Secretary,
Government of India,
Ministry of Railway (Railway Board),
New Delhi.
2. The General Manager,
Southern Railway,
Park Town.P.O.
Chennai-3.
3. The Chief Personnel Officer,
Southern Railway,
Park Town.P.O.
Chennai-3.
4. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
5. Southern Railway Employees
Consumer Co-operative Society Ltd.
No.411, Palghat
represented by its Manager. Respondents

By Advocate Mrs Sumathi Dandapani (for R.1 to 4)

The application having been heard on 14.09.2006, the Tribunal on the same day delivered the following:

ORDER**HON'BLE MR JUSTICE G SIVARAJAN, VICE CHAIRMAN**

The applicant who is working as a Packer in the Southern Railway Employees Co-operative Society Limited No. 411, Palghat has filed this Original Application seeking the following reliefs:-

- a. Declare that the refusal on the part of respondents to consider the applicant for regular absorption in railway service in terms of Annexure A-1 order of the Railway Board, on par and along with her colleagues and juniors is arbitrary, discriminatory, contrary to law and unconstitutional.
- b. Direct the respondents to consider and regularly absorb the applicant in Group D service of Southern Railway, Palghat Division, on par with her juniors with all consequential benefits of arrears of pay and allowances seniority etc.
- c. Award costs and incidental to this application.
- d. Grant such other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The applicant, it is stated, initially joined the services of the 5th respondent Society as a casual labourer during 1976. The Society is registered under the Kerala Co-operative Societies Act, 1969. After 12 years of continuous and unbroken service she was regularised as a permanent employee in the Society on 01.06.1987. She has been holding a regular post since then. These facts are stated in Para 4 (b) of the OA. These facts have not been denied by the respondents in their reply.

3. According to the applicant, she is entitled to the benefit of circular No. 29 to Master circular No.32 RBE No. 103/00 (A-1), by way of absorption in the Railway service. Since the applicant's case was not considered for absorption and since similarly



situated persons were granted the benefits, she made a representation dated 20.5.2005 (Annexure A-2) before the 3rd respondent. Since there was no response to her representation she approached this Tribunal by filing this Original Application seeking the relief which we have already extracted above. Regarding the age limit, the applicant relied on the age limit prescribed in the Kerala Co-operative Society Rules which is between 18 and 37.

4. Respondents have filed a reply statement and an additional reply statement. The applicant has filed rejoinder to the reply filed by the respondents.

5. Heard Mr.TC Govindaswamy, learned counsel for the applicant and Smt. Sumathi Dandapani, learned Standing Counsel appearing for the Railways. Counsel for the applicant made the following submissions. The applicant is entitled to the benefit of Annexure A-1 circular as she satisfies all the requirements of the said circular. The age limit for appointment of a Packer in the Co-operative Society under the Rules is between 18 and 37. The applicant was engaged initially as a casual labourer in 1976 at the age of 18 years and her services were regularised in the Co-operative Society on 01.06.1987. It is the age limit prescribed for appointment in the Co-operative society which is relevant for consideration under Annexure A-1 circular. The applicant is well within the age limit even if his initial appointment is taken as 01.06.1987. There were subsequent circulars issued in the form



of RBE produced as Annexure A-6 enhancing age limit for recruitment under the Railways by two years and three years subsequently prior to 2000. If for any reason, a view is taken that the age of the applicant at the time of regularisation is the basis, then she had completed 28 years, 10 months and 16 days, having regard to the fact that the applicant was continuously working in the Co-operative Society without any break since 1976 and the further fact that the Government itself has enhanced the age limit for appointment in the Railways by 2-3 years. ¹⁴ It is a fit case for invoking the powers vested under Rule 115 (iv) Section B of Chapter 1 of Indian Railway Establishment Manual.

6. Learned counsel for respondents, on the other hand has made the following submission. The 2nd respondent had sought clarification in the matter from the 1st respondent as evident from Annexure R-4 and the 1st respondent in reply had sent a communication dated 10.05.2006 (Annexure R-5) stating that the instructions issued in the circular dated 30.05.2000 must be strictly followed in the matter of absorption and to take a decision accordingly. The case of the applicant in the representation is that she was appointed in the Co-operative society only on 01.07.1987 and that at that time she had completed 28 years, 10 months and 16 days which is well within age limit prescribed in Co-operative Societies Rules. By virtue of the provisions under Para 179 sub para 3 of IREM for Group D the age limit is between 18 to 28 and it is this rule which is referred to in Annexure A-1. Annexure A-1 circular deals only with

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regular service and not with casual service and therefore the initial engagement of the applicant as casual worker in 1976 has no relevance. The applicant has no case in her representation as well as in the OA that the prescribed age limit should be determined with reference to her initial appointment as casual labourer in 1976 and therefore this Tribunal is only to consider the case of the applicant based on her appointment in 1987. In short, the standing counsel strongly opposed the claim of the applicant for the benefit of Annexure A-1 with reference to the legal provisions.

7. We have considered the rival contentions. As already noted the applicant was initially engaged as a casual labourer in 1976 and she was continuing till 1987 when her services were regularised in the Co-operative Society on 01.06.1987. The Society where the applicant was working is registered under the Co-operative Societies Act. For appointment to the various posts in the Co-operative Society the qualifications and the age limit have been prescribed. As per provisions the Kerala of Co-operative Society Rules for appointment to the post of Packer, the age limit is between 18 and 37.

8. We have perused the circular at Annexure A-1 granting the benefit of absorption of the staff of quasi-administrative offices/organisations connected with the Railways. We find that the expressions used in Para 3 of the said communication are " those staff of quasi-administrative offices / organisations who

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were on roll continuously for a period of at least three years as on 01.06.997, 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 (underlying ours) within the prescribed age limit. Reading the circular we have got a doubt, based on the expressions "staff" and "engaged", as to whether those expressions really refer to regular employees only or as to whether it will take in the entire staff working in the Co-operative Societies. Further, the circular says that the persons to be absorbed shall fulfill the prescribed educational qualification required for Group D posts but when it came to the age limit it only says that such staff should have been engaged within the prescribed age limit. Is it the age limit prescribed for appointment in the Co-operative Society in Co-operative Society Rules ? If it so, the applicant is well within the age limit. On the other hand if the age limit referred in Annexure A-1 is for recruitment of Group D posts under the Railways, the position will be different. Similarly, if a view is taken that the expression "staff" referred in Annexure A-1 is one in regular employment the position will be different. We note that there is a possible difference between the expressions "staff engaged" and "staff appointed". The expression "staff engaged" is comprehensive enough to take in all sorts employment in service, regular, temporary, casual etc. What kind of service is meant for the benefit of Annexure A-1, circular is not specified nor is discernible. Under these circumstances, inspite of the fact that the learned standing counsel submits that the circular deals only



with regular appointments, we are of the view that this matter requires serious consideration at the hands of the Government itself. This is also for the reason that these matters as such has not been projected by the 3rd respondent in the communication dated Annexure R-4 seeking clarification from the Government and the further fact that the Government itself had only directed the 3rd respondent to strictly comply with the circular dated 30.05.2000 (Annexure A-1) and to take a further decision accordingly. In the circumstances the course which we adopt is to direct the very same Government which issued Annexures A-1 and R-5 to consider the case of the applicant with reference to her initial engagement as a casual labourer in 1976 and the regular appointment of the applicant with effect from 01.06.1987 keeping in mind the observations made herein above and to take a decision thereon by passing a reasoned order.

9. In this context it is also a matter for the Government and/or to the competent authority to consider the case of the applicant in view of the fact that the applicant has been continuously working in the Co-operative Society since 1976 till date, as to whether this is a fit case for relaxing the age limit as provided under Rule 115 (iv) Section 5 of IREM and to take a decision in the matter of absorption as provided in Annexure A-1. Accordingly we direct the 1st respondent to take a decision on the two matters mentioned above in accordance with law and in the light of the observations made in this order within a period of six months from the date of receipt of a copy of this order. The



decision so taken will be communicated to the applicant immediately thereafter.

10. The OA is disposed of as above. In the circumstances, parties will bear their respective costs.

Dated, the 14th September, 2006.

N.RK

N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

G Sivarajan

JUSTICE G SIVARAJAN
VICE CHAIRMAN

VS