

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.206/07

Wednesday this the 5th day of March 2008

C O R A M :

**HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN
HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER**

1. K.Gunasekharan,
Clerk, Railway Employees Consumers
Co-operative Stores Limited, No.AA 493,
Railway Colony, Erode, Southern Railway,
Palghat Division.
2. L.Musthafa,
Attender, Railway Employees Consumers
Co-operative Stores Limited, No.AA 493,
Railway Colony, Erode, Southern Railway,
Palghat Division.
3. L.Rajavelu,
Clerk, Railway Employees Consumers
Co-operative Stores Limited, No.AA 493,
Railway Colony, Erode, Southern Railway,
Palghat Division.
4. P.Palaniappan,
Clerk, Railway Employees Consumers
Co-operative Stores Limited, No.AA 493,
Railway Colony, Erode, Southern Railway,
Palghat Division.
5. S.Prithvirajan,
Clerk, Railway Employees Consumers
Co-operative Stores Limited, No.AA 493,
Railway Colony, Erode, Southern Railway,
Palghat Division.
6. R.Selvaraj,
Attender, Railway Employees Consumers
Co-operative Stores Limited, No.AA 493,
Railway Colony, Erode, Southern Railway,
Palghat Division.

...Applicants

(By Advocate Mr.Siby J Monippally)

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Versus

1. Union of India represented by Chief Personnel Officer, Southern Railway, Park Town, Chennai.
2. The Senior Divisional Personnel Officer, Southern Railway, Palghat Division, Palghat. ...Respondents

(By Advocate Mr.K.M.Anthru)

This application having been heard on 26th February 2008 the Tribunal on 5th March 2008 delivered the following :-

ORDER

HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN

The applicants in this case are working in the Railway Employees Consumers Co-operative Stores Limited, Erode and have prayed for the following reliefs :-

1. To direct the respondents to regularise the services of the applicants in the Railways at par with the regular Railway Employees in corresponding posts with effect from the date of their initial entry into service.
2. Grant such further and other reliefs as the nature and circumstance of the case may require.

2. It is averred that the applicants were working in the above mentioned Co-operative Stores continuously since their initial entry and they are educationally qualified. They are aggrieved by the inaction of the respondents in not regularising their services in the Railways.



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3. The historical background of the case dates back to the order of the C.A.T., Madras Bench in O.A.305/88 which declared the employees of the Southern Railway Employees Co-operative Stores at par with regular Railway servants. The appeal filed by the Railways against the order of the Madras Bench before the Supreme Court was also dismissed vide Annexure A-2 dated 7.9.1994. The applicants have made out a case that even though law was declared by the Court the benefits of the judgment were not extended to all persons working in various Railway Employees Consumers Stores in Southern Railway and though the respondents had proposed to collect the details of all the employees who are eligible for regularisation, no further action has been taken and only certain persons were granted regular appointment.

4. Reply statement has been filed by the respondents. It is admitted that the applicants are employees of the Railway Stores and their service conditions are governed by the Co-operative Societies Act and they are functioning under the control of the Registrar of the Co-operative Societies, Tamilnadu. The appointments to the various posts to the Consumer Co-operative Stores are made by the Managing Committee of that Store according to the exigency of service and as per conditions laid down by the Registrar of Co-operative Societies. The Railway Administration is in no way connected with their appointment and service conditions but only provides certain facilities/amenities for the functioning and maintenance of the Co-operative Stores. Respondents also submitted that the applicants have no locus standi to invoke the jurisdiction of this Tribunal and the

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Hon'ble Supreme Court in a petition filed by the All India Railway Institutes Employee's Association has held that there were material difference between the Canteens run by the Railway establishment and Railway Institutes and Clubs. They also submitted that the reliance placed by the applicants on Annexure A-1 order of the Madras Bench in O.A.305/88 and the appeal which was dismissed by the Hon'ble Supreme Court is misplaced as several developments have taken place thereafter. The respondent Railway has filed M.A for extension of time before the Madras Bench of this Tribunal and the respondents were directed to implement the order in O.A.305/88 in respect of 172 persons shown in the Annexure to the order and thereafter the Railway Authorities have passed an order dated 26.7.1996 stating that the applicants could continue to function in the Stores only on deputation in terms of para 2337 of IREM. This order was resisted by the employees and the respondents Railway approached the Tribunal which held that the proper course would be to approach the Hon'ble Supreme Court for appropriate orders. The Railway filed Civil Appeal No.2492/98 and 2493/98 before the Hon'ble Supreme Court which held that the benefits would be confined to the 172 employees whose list was annexed to the O.A before the Tribunal and that others would have to pursue their legal remedies in accordance with law. These benefits granted in Annexure A-1 are available only to the workers therein and the applicants who are not parties cannot seek any benefits out of that order. In a similar petition filed by the Co-operative Stores under South Central Railway before the C.A.T., Hyderabad Bench were also allowed by the Tribunal, but the Railway Administration filed Special Leave Petition before

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the Hon'ble Supreme Court and Annexure R-2 judgment dated 15.12.1995 was rendered by the Supreme Court in the case of Union of India (Railway Board) and others Vs. J.V.Subbaiah and others as reported in (1996) 2 SCC 258. In this it was categorically held by the Supreme Court that the reasoning reached by the Madras Bench of the C.A.T and followed by the Hyderabad Bench is wholly illegal and unsustainable and that officers, employees and servants appointed by the Railway Co-operative Stores/Societies cannot be treated on par with Railway servants under paragraph 10-B of the Railway Establishment Code. It is, therefore, the contention of the respondents that they are not bound to regularise the applicants in view of the above settled legal position.

5. It is further submitted that the issue of Annexure A-3 order dated 19.5.2003 calling for certain particulars from the Secretary of the Southern Railway Employees Co-operative Stores and Railway Institutes was as per the directives of the Railway Board communicated in their letter dated 30.5.2000 (Annexure R-3). Annexure R-3 as a one time relaxation has been given to the effect that Railways should consider the absorptions of only those staff of quasi administrative offices/organisations who were on roll continuously for a period of at least three years on 10.6.1997. The details were scrutinised and found that the applicants herein did not fulfil the criteria laid down by Railway Board in the Annexure R-5 i.e. completion of three years of service as on 30.5.2000 and there is no inaction on the part of the respondents.



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6. Rejoinder has been filed by the applicants reiterating that they fulfills the requirements stipulated in the notification and also pointing out names of certain persons who were working in Co-operative Stores at Coonoor who were regularised in pursuance of this order.

7. Thereupon the respondents filed another additional reply statement furnishing the service particulars of the applicants at Annexure R-6 which was received from the Railway Employees Consumers' Co-operative Stores Limited, Erode. The details as furnished show that the Railway Employees Consumers' Co-operative Stores was defunct during the period from 27.8.1992 to 31.3.1999 and the Fair Price Shops run by the Store were transferred to Erode District Consumer Co-operative Whole Sale Store along with employees mentioned in the list. The details of the service rendered by the applicants have been furnished as below :-

Shri.K.Gunasekaran	985 days
Shri.L.Musthafa	985 days
Shri.L.Rajavelu	798 days
Shri.P.Palaniappan	985 days
Shri.S.Prithivirajan	330 days
Shri.R.Selvaraj	426 days

8. They have also pointed out that the persons mentioned by the applicants in their rejoinder were regularised as could be seen from the orders at Annexure A-5 and Annexure A-6 itself as per the orders of the Tribunal in O.A.305/88 and C.A.No.2492/98 and 2493/98 before the Supreme Court as they were among the eligible 171 employees listed in the annexure to the O.A. Hence they reiterated that the applicants do not specify the requisite stipulation as could be seen from Annexure R-6 letter dated 15.5.2007.

9. When the matter came up for hearing, learned counsel for the applicants contended that the number of days of service of the applicants as shown in Annexure R-6 table furnished by the respondents was not correctly computed as could be seen from the remarks column to the effect that though the Railway Employees Consumers' Co-operative Store was defunct during period from 27.8.1992 to 31.3.1999, the employees were transferred to Erode District Consumer Co-operative Whole Sale Store and they continue to work there and were again re-transferred to the Railway Employees Consumers' Co-operative Store from 1999 when the Store started functioning. Since it was not clear on what basis the number of days of service has been computed i.e. whether by ignoring the service rendered in the Erode District Consumer Co-operative Whole Sale Store or not, the respondents were directed by this Court to clarify the matter. In response to that direction, the respondents have filed second additional reply statement furnishing the details at Annexure R-7. Annexure R-7 is reproduced for easy reference :-

Name	1st spell working at Rly. Co-op. Stores			2nd spell working at Rly. Co-op. Stores			Total No. of days worked at Rly. Co-op.	Remarks
	From	To	No. of days	From	To	No. of days		
P.Palaniappan	14.2.91	26.8.92	560	01.4.99	30.5.00	425	985	1. Sri.P.Palaniappan and Sri.K.Gunasekaran had only continuously worked from 27.8.92 to 31.3.99 at District Co-op Stores and others had not worked during that period 2. Sri.L.Rajavel had worked at Rly. Stores, Ed to revive the function of Stores from 1.8.97 to 30.1.98 3. Smt.K.Vijayalakshmi had worked continuously from 1.1.86 to 30.3.90 (1551 days)
K.Gunasekaran	14.2.91	26.8.92	560	01.4.99	30.5.00	425	985	
L.Rajavel	14.2.91	26.8.92	559	04.4.00	30.5.00	56	798	
	01.8.97	30.1.98	183					
S.Prithvirajan	01.8.91	30.4.92	273	04.4.00	30.5.00	57	330	
L.Mustafa	14.2.91	26.8.92	560	01.4.99	30.5.00	425	985	
R.Selvaraj	-	-	-	01.4.99	30.5.00	426	426	
K.Vijayalakshmi	01.1.86	30.3.90	1551	-	-	-	1551	



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10. We heard the learned counsel on both sides and perused the records. Respondents' side reiterated their arguments that none of the applicants specify the conditions of continuous service of three years as stipulated in Annexure R-3 notification. It was also submitted that out of six applicants except applicants 1 and 4 the remaining four applicants had not at all worked during the period from 27.8.1992 to 31.3.1999. Learned counsel for the applicants submitted that in view of the documents now furnished by the respondents showing the exact service particulars he is pressing the claims of the applicants 1 and 4 only and the claims of the remaining applicants are not pursued.

11. We have given careful consideration to the matter in the light of the additional pleadings and documents brought on record. Initially the applicants had in the O.A mainly taken the plea that they were entitled to be considered for regularisation in the light of the order of the C.A.T., Madras Bench and the unequivocal declaration of the Hon'ble Supreme Court which upheld the order of the Tribunal. Now from the detailed reply statement filed by the respondents it is clear that the benefits of Annexure A-1 order cannot be extended to the applicants who are not parties in O.A.305/88. Though the applicants may be similarly placed they were not covered by order in O.A.305/88 which was upheld by the Supreme Court. They also joined the Co-operative Stores from 1991 onwards. The Hon'ble Supreme Court has also in the further judgment arising out of the order of C.A.T., Hyderabad Bench made an unequivocal declaration that officers and employees appointed by Railway Co-operative Stores cannot be



treated on par with Railway servants and cannot be given parity of status, promotion etc. as ordered by C.A.T., Hyderabad Bench. Thus their status has been legally settled in law and there cannot be any further claims in this regard.

12. The only ground on which the applicants can now rely on is Annexure R-3 order issued by the Railway Board dated 30.5.2000 as a one time relaxation to consider absorption of such staff subject to certain conditions. The text of the order is reproduced in full as under :-

**GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)**

The General Manager (P)/OSD, All Zonal Railways/PUs, RE/Allahabad, MTP/Calcutta, Mumbai, Chennai, CAO (R), DCW/Patiala, COFMOW/New Delhi, DG, RDSO/Lucknow, Director, IRISSET/Secunderabad, IRICEN/Pune, IRIEEN/Nasik, IRIM&EE/Jamalpur, Principal, RSC/Vadodara, Chairmen/RRBs.

Sub :- Recruitment in Group 'D' category on the Railways of the staff working in quasi-administrative offices/organisations connected with Railways.

Attention is invited to Board's letter No.E9NG)II/95/RR-1/40 dated 11.6.97, wherein it was laid down that the staff working in the quasi-administrative offices or organisations connected with the Railways, will henceforth have to compete alongwith other eligible candidates for recruitment to the Railway service, as and when notifications for recruitment to Group 'D' posts etc. are issued by the Railways/RRBs.

2. A demand had been raised by both the recognised Staff Federations that those staff of quasi-administrative offices/organisations who were working in these offices as on 10.6.97 should be considered for absorption in Railway service, as was being done earlier in terms of Board's letter No.E(NG)III/77/RR-1/5 dated 26.8.77.

3. The matter has been considered by the Board. It has now been decided that, as a one time relaxation, the Railways may consider absorption of only those staff of quasi-administrative offices/organisations who were on roll continuously for a period of at least three years as on 10.6.97, and are still on roll, subject to fulfilment 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 Register/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. Please acknowledge receipt.
(Hindi version will follow)

-Sd-
(Devika Chhikara)
Director Establishment (N)
Railway Board.

13. Hence the prayer of the applicants for regularisation has to be strictly in conformity with the conditions prescribed in the above order which are mainly

1. they should be on roll continuously for a period of at least three years as on 10.6.97
2. they should be still on roll
3. they should fulfill the prescribed educational qualification for recruitment to Group 'D' posts.

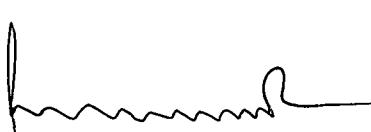
14. Counsel for the applicants has now restricted his pleadings to the prayer of applicants 1 and 4 and therefore we are not examining the status of the other applicants with reference to the above order. Regarding applicants 1 and 4, the contention of the respondents is that they have not been on roll of the Railways Co-operative Store continuously for a period of three years as on 10.6.1997. Annexure R-7 now produced in the second additional reply statement and reproduced supra would show that both the applicants had a total service of 985 days in two spells in the Railway Employees Consumers Co-operative Stores. In the remarks column it is further clarified that these two applicants had continuously worked during the intermittent period from 27.8.1992 to 31.3.1999 at the District Co-operative Stores. Thus there is no break in their services and they had been continuously working from 26.8.1992 till 30.5.2000 which is taken as cut off date, in the statement, though the cut off date mentioned in Annexure R-3 notification is 10.7.1997. Even if that date is taken into consideration, the applicants have been continuously working from 1992 onwards and had completed three years of service. The question raised by the respondents is that the service rendered in the District Co-operative Stores cannot be construed as service under the Railway Co-operative Stores, Erode. Now, therefore, the short question to be decided by us is whether this service could be taken as service rendered under the Railway Co-operative Stores. From the pleadings in Annexure R-3, the first paragraph thereof, it is seen that the staff working in quasi-administrative offices or organisation connected with the Railways are to be considered for regularisation. In paragraph 3, there is no mention that the services

should have been rendered only in the Railway Co-operative Stores. The circumstances under which the employees came to be transferred to the District Whole Sale Co-operative Stores have been detailed in the reply statement by the respondents themselves. As the Railway Co-operative Stores had become defunct for some time, the employees who were regularly appointed by the Co-operative Society under the bye-laws were temporarily transferred to another Society and then brought back to the same Store after the revival of the Store. The fact that they were again taken back to the Railway Co-operative Stores would give a clue that these employees were regular employees of the Railway Employees Consumers Co-operative Store. They are also educationally qualified and are still on the roll of the Society. The respondents have admitted in their reply statement that all the Societies registered under the Co-operative Societies Act function under the control of the Registrar of Co-operative Societies, Tamilnadu and the appointments to various posts in the Consumer Co-operative Stores are made by the Managing Committee of that store according to the exigency of service and as per conditions laid down by the Registrar of Co-operative Societies. In exercise of these powers only, they were transferred for some period from one of the Stores under the aegis of the Registrar of Societies to another, for protection of their service conditions. It cannot be taken as resulting in the severance of their connections with the Railway Co-operative Stores in whose service they were originally appointed. Hence these employees have to be deemed to be the employees of the Railway Co-operative Store, Erode and their service in the Fair Price Shops connected with the Railway

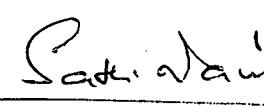
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Co-operative Stores which were transferred temporarily and brought back cannot be ignored for consideration of their regularisation. The Railway Co-operative Store has been revived on 1.4.1999 and started functioning. These two applicants are continuing in the service of the Store. Hence we are of the view that it would not be correct on the part of the Railway Administration to hold these services as ineligible and declare the applicants as not qualifying for regularisation as per Annexure R-3 orders. In any case the respondents have to observe the procedure as prescribed in paragraph 3 of the order extracted at paragraph 12 supra. We would only make it clear that in the case of the applicants 1 and 4 they should be deemed to have continued in the service of the Railway Co-operative Stores during the temporary period of its dysfunction and on that account they should not be denied the benefits of Annexure R-3 order dated 30.5.2000. The O.A is disposed of with the above mentioned declaration and the respondents are directed to take action in pursuance thereof.

(Dated this the 5th day of March 2008)



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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