

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 318 of 2009

Friday, this the 19th day of February, 2010

CORAM:

Hon'ble Mr. George Paracken, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

N. Janaki, aged 49 years, W/o. Balakrishnan, Packer, Southern Railway Employees Consumer Co-operative Society Ltd. No. 411, Palakkad, residing at Cherungattukavu, Akathethara, Pallakkad-678008.

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Applicant

(By Advocate – Mr. Mohana Kumar for Mr. T.C. Govindaswamy)

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, 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 – Mr. Thomas Mathew Nellimoottil)

The application having been heard on 19.02.2010, the Tribunal on the same day delivered the following:


ORDER

By Hon'ble Mr. George Paracken, Judicial Member -

This is the third round of litigation by the applicant seeking absorption in the regular establishment of Indian Railways.



2. The applicant was initially engaged as a Packer in the year 1976 in the Southern Railway Employees Consumer Co-operative Society Limited, No. 411, Palghat. Later on she was absorbed there with effect from 1.6.1987. Her date of birth is 15.7.1958. The respondents have issued the Annexure A-2 Railway Board circular No. 103 of 2000 dated 30.5.2000, according to which, as a one time measure, the Railways have decided to absorb the staff working in quasi administrative offices or organizations continuously with Railways and who were still on roll continuously working for a period of at least three years as on 10.6.1997 and were still on roll, subject to fulfillment of the prescribed educational qualification required for recruitment to Group-D posts. The other condition was that such staff should have been engaged within the prescribed age limit. As the applicant was not given the benefit of the aforesaid circular, she had approached this Tribunal by filing OA No. 136 of 2006 seeking declaration that the refusal on the part of the respondents to consider her for regular absorption in Railway service on par/along with her colleagues and juniors is arbitrary, discriminatory, contrary to law and unconstitutional. According to her, she was engaged initially as Casual Labour in 1976 at the age of 18 years and even if her date of regularization in the Co-operative Society, viz. 1.6.1987 was being taken into account she was well within the age limit as prescribed for appointment under the Co-operative Society Act. Even, going by the age at the time of regularization as the basis for determining the age limit, then also she was within the age limit because as on 1.6.1987 she was only 28 years 10 months and 16 days as the Government itself has increased the age limit by 2-3 years for the members of the OBC community to which she belongs.



Therefore, it is a fit case for invoking the provisions of Rule 115(iv) of Section B of Chapter 1 of Indian Railway Establishment Manual which reads as under:-

"For direct recruitment to all Group 'C' and 'D' vacancies, serving employees who have put in three years continuous service in the Railways will be given age relaxation to the extent of service put in subject to upper age limit of 35 years not being exceeding. Similar age concession will be applicable to such of the casual labourer/substitutes as have put in three years of continuous or in broken spells."

3. The respondents on the other hand contended that the basis for computing the age was the date of absorption in the Co-operative Society i.e. 1.6.1987 and since her age as on that date was 28 years by 10 months and 16 days, she could not be absorbed as the prescribed age limit in terms of para 179 sub para 3 of IREM for Group-D employee is 18 to 28 years.
4. After considering the rival contentions the Tribunal, vide Annexure A-3 order dated 14.9.2006 directed the respondents to strictly apply the aforesaid Railway Board circular dated 30.5.2000 and take a decision in the matter considering the fact that her initial engagement as Casual Labour was in 1976 and her regular appointment was with effect from 1.6.1987. While issuing such direction the Tribunal observed that the respondents should also consider her case for age relaxation in terms of Rule 115(iv) Section B of IREM.
5. Pursuant to the aforesaid direction, the respondents have issued Annexure R-1 letter dated 25.4.2007. According to the said letter, the staff engaged in the quasi administrative office refers to staff of such office only



and age limit referred in Board letter dated 30.5.2000 is for recruitment to Group-D posts on the Railways. Further, a person who has been engaged by a quasi-administrative body can be absorbed in Group-D in the Railway only when he/she has been engaged within the age limit prescribed by the Railway for direct recruitment to that category subject to fulfillment of other conditions laid down for the purpose and not the the age limit prescribed by the said quasi administrative body for engagement in such body. In other words, the term "prescribed age limit" is only with reference to age limit laid down for appointment in Railways.

6. The applicant challenged the aforesaid Annexure R-1 letter dated 25.4.2007 also before this Tribunal in OA 449 of 2007. This Tribunal vide Annexure A-4 order dated 11.12.2008 observed that that the respondents had considered only one of the terms contained in the Annexure A-3 order of this Tribunal dated 14.9.2006 and the direction to consider the case of the applicant for relaxation of age limit in terms of Rule 115(iv) Section B of IREM was not carried out. The impugned order dated 16.3.2009 in this OA has been issued by the respondents pursuant to the aforesaid directions of this Tribunal in OA 449 of 2007 (supra). The respondents has, submitted that the Railway Board has clarified that Rule 115(iv) Section B of IREM stipulates that only serving Railway employees will be given age relaxation for direct recruitment to Group-C and D posts and it is not applicable in the present case because the Consumer Co-operative Stores Employees are neither regular nor casual, or substitute, Railways employees to be covered under the rules. The applicant has challenged the aforesaid order in the



present OA on the ground that there was a clear finding in Annexure A-3 order that the applicant was only 18 years when she was first appointed in the Society and she was 29 years when she was regularly absorbed/made permanent on 1.6.1987 and that the age limit prescribed for appointment in Society was 29 years. Therefore, it is in vein to go in search for any other interpretation that the applicant should have been within the age limit stipulated for appointment to Group-C and D posts in Railways as on 10.6.1997, as if she is an outsider.

7.1. The respondents have relied upon the judgment of the Apex Court in Union of India Vs. J.V. Subhaiah & Ors. - 1996 (2) SCC 258, wherein it has been held as under:-

"21. The principle of equality enshrined under Article 14 of the Constitution, as contended for the respondents, does not apply since we have already held that the order of the CAT, Madras Bench is clearly unsustainable in law and illegal which can never form basis to hold that other employees are invidiously discriminated offending Article 14. The employees covered by the order of the Madras Bench may be dealt with by the Railway Administration appropriately but that could not form foundation to plead discrimination violating Article 14 of the Constitution. The Hon'ble Supreme Court further held that we have no hesitation to hold that the officers, employees and servants appointed by the Railway Co-operative stores/societies cannot be treated on a par with Railway servants under Para 10-B of the Railway Establishment Code nor can they be given parity of status, promotions, scales of pay, increment etc. as ordered by the CAT, Hyderabad Bench."

7.2. They have also relied upon the judgment of the Apex Court in the case of State of Karnataka Vs. Uma Devi - 2006 (4) SCC 1 and contended that the applicant was not subjected to any substantial prejudice or irreparable damages as averred by her in the Original Application.



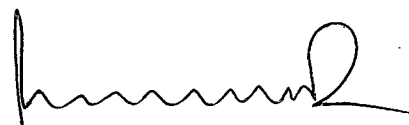
8. We have heard learned counsel for the applicant and the respondents. The undisputed fact in this case is that the applicant was initially engaged as a Packer in the Southern Railway Employees Consumer Co-operative Society Limited, a quasi administrative office under the Railways, in the year 1976. From that date onwards she was continuously working in the said society. From 1.6.1987 she was absorbed as a regular employee in the Society. The conditions laid down in the Annexure A-2 circular of the Railway Board dated 30.5.2000 are four fold i) the worker should be on the roll for a period of three years as on 10.6.1977 and still on roll; ii) he/she should fulfill the prescribed minimum educational qualification for which is at least VIII class pass; iii) he/she should have been engaged within the prescribed age limit and iv) the absorption should be resorted only after exhausting the list of ex-casual labour borne on the live casual labour registers/supplementary live casual labour registers. The only dispute is regarding condition about the age limit of the applicant. A plain reading of the aforesaid circular would show that what is prescribed is that the staff "should have been engaged within the prescribed age limit". There was no condition that the engagement should have been on regular basis. Undisputedly, the applicant was engaged by the Society in the year 1976 when she was well within the prescribed age limit. Since no stipulation has been made in the said circular regarding the nature of engagement, it cannot be imputed that only from the date of regularization she was "engaged". Therefore, the word "engagement" for the purpose of the circular dated 30.5.2000 shall be treated as the "initial engagement" and not from the date of any temporary or provisional appointments or the date of regularization.



Even the respondents themselves have admitted in their reply that the provisions regarding age relaxation contained in Rule 115 (iv) of Section B of IREM applies only to Railway employees and it is not applicable to employees of Consumer Co-operative Services as they are "neither regular nor casual or, substitute." The applicant, having been appointed to the Southern Railway Employees Consumer Co-operative Society Limited initially from 1976, in the absence of any contrary stipulation, she shall be treated as "engaged" from that date itself for the purpose of absorption as envisaged in the Annexure A-2 circular of the Railway Board. Accordingly, it is declared that the applicant was appointed in the Southern Railway Employees Consumer Co-operative Society well within the prescribed age limit and, therefore, she is entitled to the benefits as envisaged in the said circular. The respondents shall take necessary action to absorb her as Group-D employee as has been done in the cases of her erstwhile colleagues in the said Society, with all consequential benefits except back wages. Necessary orders in this regard shall be issued within a period of two months from the date of receipt of a copy of this order. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(GEORGE PARACKEN)
JUDICIAL MEMBER

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