

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.NO.394/2001

Monday, this the 8th day of April, 2002.

CORAM;

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

M.J.Ammini,  
Casual Labourer,  
Southern Railway,  
O/o the Senior Section Engineer/Permanent Way,  
Nagercoil Junction. - Applicant

By Advocate Mr TC Govindaswamy

VS

1. Union of India represented by  
the General Manager,  
Southern Railway,  
Head Quarters Office,  
Park Town.P.O.  
Chennai-3.
2. The Divisional Railway Manager,  
Southern Railway,  
Trivandrum Division,  
Trivandrum-14.
3. The Senior Divisional Personnel Officer,  
Southern Railway,  
Trivandrum Division,  
Trivandrum-14. - Respondents

By Advocate Mr P Haridas

The application having been heard on 26.2.2002 the Tribunal on 8.4.2002, delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant is a Casual Labourer, working in the office of the Senior Section Engineer/Permanent Way, Southern Railway, Nagercoil. She was earlier retrenched, but reengaged

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under respondents 2&3 with effect from 10.3.93 in pursuance of the order of this Tribunal in O.A.No.930/1991. She was continuing in the same job, yet was denied the benefit of temporary status and regularisation. The applicant's claim is that she is entitled to temporary status in accordance with the provisions of Para 2001 of the Indian Railway Establishment Manual(IREM for short), Vol.II and other consequential benefits with effect from 10.7.93. She belongs to Scheduled Caste community and being so, she would be entitled to regularisation on that account also, according to her. It appears that in 1995, the respondents attempted to terminate her services, but on the intervention of this Tribunal, the impugned order was set aside on grounds of violation of natural justice. However, the respondents were given liberty to take further action in connection with the enquiries in the light of certain allegations of misconduct like, furnishing of wrong date of birth and unreliable educational records on the basis of which, she had been allegedly engaged as Casual Labourer at the very outset. The applicant was given an opportunity of hearing in connection with the enquiries against her and again, a termination order was passed. The applicant approached this Tribunal and by order in O.A.No.636/95 dated 13.6.95, this Tribunal set aside the termination order and directed the Chief Personnel Officer, Southern Railway, Chennai to advert to the facts regarding sufficiency of opportunity given, feasibility of correcting the date of birth and ordering applicant's superannuation on that basis in due course. The applicant was permitted to furnish a fresh representation. Respondents were

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ordered to consider the same and take appropriate decision after taking into account all the relevant facts. The Chief Personnel Officer considered the applicant's representation and passed A-1 order dated 26.8.96. Meanwhile, the applicant was continuously working as Casual Labourer without any break. The Chief Personnel Officer set aside the termination order impugned in O.A.636/95 and which was stayed by the Tribunal, but held, however, that it did not preclude the department to take disciplinary action for the alleged wilful suppression regarding the applicant's date of birth and related matters. The applicant's earlier representations for grant of temporary status were not acted upon. After A-1, the applicant received a charge memo dated 29.8.97 for a major penalty. In May 1997, the enquiry was over. There appeared to be no action thereafter though the applicant had submitted her defence statement on 15.5.98. The applicant still continues to be on daily wages. She has not given the benefits of pay scale, leave, free pass, medical facilities etc. which go with temporary status attained Casual Labourer. A-2 representation dated 2.12.99 followed by A-3 representation dated 25.3.2000 have also produced no result. The applicant is aggrieved by the hostile discrimination and harassment as well as recurring monthly loss on account of denial of the benefits of temporary status casual labourer. In view of the fact that she has continuous and unbroken service as open line casual labourer with effect from 10.3.93 and her services were utilised as Gangwoman against regular post, the applicant would be entitled to temporary status with effect from 10.7.93 by operation of law and she would be eligible to get all the

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consequential benefits including regularisation. The inaction on the part of the respondents was totally unjustified since the applicant had more than 120 days of continuous service and since there is no rule that disentitles her to the claim. The applicant seeks relief by way of declaration that the nonfeasance on the part respondents to treat the applicant as a temporary Railway servant (temporary status) with effect from 10.7.1993, and the denial of consequential benefits, are arbitrary, discriminatory, contrary to law and unconstitutional and a direction to the respondents to treat the applicant as a temporary Railway Servant (temporary status) with effect from 10.7.1993, and to grant the consequential benefits therefrom within a time limit.

2. In their reply statement, the respondents would state that the O.A. is barred by limitation, since the applicant is seeking the benefit of temporary status from 10.7.93 by making a prayer for the same on 26.4.2001. Her reengagement was based on forged date of birth. Thus, she had no eligibility for engagement as Casual Labourer and that being so, conferment of temporary status was inadmissible, as the claim has no foundation of verifiable records. According to the respondents, the applicant was removed from service on 30.6.2001 on account of her proved misconduct and therefore, there was no denial of temporary status. But reengagement was granted only because of this Tribunals's orders in O.A.930/91. However, the Chief Vigilance Officer, Madras was advised about the matter as the genuineness of the documents forming the

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very basis of her engagement was suspect. The termination order dated 17.1.95 was with the Chief Vigilance Officer's recommendation although the same was subsequently quashed by the Tribunal granting liberty to the department to pursue the matter. Fresh opportunity was granted to the applicant before fresh termination proceedings were initiated, it is submitted.

3. The applicant has filed a rejoinder challenging the validity of the contentions contained in the reply statement and highlighting the fact that respondents themselves have treated the applicant as a temporary status attained casual labourer by invoking the provisions of Discipline and Appeal Rules on removing her from service after filing this O.A. The applicant's continuous and unbroken service as a casual Labourer in open line with effect from 10.3.93 was more than sufficient proof for her right to conferment of temporary status, according to the applicant.

4. I have heard Shri TC Govindaswamy, learned counsel for the applicant and Shri P Haridas, learned counsel for the respondents. According to Shri Govindaswamy, the termination of the applicant's services after filing of this O.A. is not germane to the issue of conferment of temporary status as prayed for in this O.A. On completion of 120 days of casual labour service, the applicant was entitled to temporary status which would secure her certain additional wages and benefits like certain scale of pay, increments, leave, medical facilities etc. She was only craving for those benefits. Disciplinary proceedings against her might have taken.

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However, it remains a fact that the applicant acquired eligibility to be conferred with temporary status with effect from 10.7.93. There was no failure on the part of the applicant to bring it to the notice of the higher authorities. In any case, these are matters which could not have been acquiesced by the applicant. The applicant had a continuing cause of action in as much as every month's pay and other benefits were adversely affected, learned counsel would maintain. He would refer to the decision of the Apex Court in M.R.Gupta Vs Union of India, (1995) 5 SCC, 628 in this regard. The claim of temporary status was not a matter of discretionary conferment but by sheer operation of law. There was no other evidence required except the applicant's service record. There is no dispute that the applicant had put in the qualifying length of service and that therefore, she was eligible for such benefit with effect from 10.7.93. The learned counsel would invite my attention to the decision of the Supreme Court in L.Robert D' Souza Vs Executive Engineer, Southern Railway and another, 1982 SCC(L&S), 124 for the preposition that the temporary status was to be allowed by operation of law and it cannot be said that it was a matter of discretionary grant. The applicant having been kept in a state of animated suspense for a long time, she should be given the already delayed benefits with the necessary arrears, the learned counsel would plead. Shri Haridas, learned counsel for the respondents on the other hand would emphasise the contention regarding limitation and would state that the applicant was aware of the so called conferment of temporary status in 1993 itself. The order of retrenchment was set

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aside by the Chief Personnel Office by his order dated 26.8.86(A-1) and the applicant had been inactive during the interregnum between 26.8.96 and the date of issue of the charge memo i.e. 29.8.97. Thus what she could not do directly was sought to be achieved indirectly by filing this O.A., the counsel would maintain. Although the order of termination was made on 25.6.2001, the same remains unchallenged till today, according to the learned counsel. He would further maintain that even the conferment of temporary status cannot be finalised without taking into account the applicant's actual date of birth and other particulars which form the very foundation of the disciplinary proceedings. Thus, the applicant's initial engagement is vitiated by fraud and hence there was no question of giving her the benefit of temporary status until the whole matter was resolved, the counsel would urge.

5. On a careful scrutiny of the records and having regard to the contentions put forward by counsel on either side, I am of the view that there is no compelling reason or legal justification for denying the benefits of temporary status to the applicant by virtue of her satisfying the conditions therefor. She has put in the required length of service for this purpose. While the departmental authorities might exercise their powers to proceed against an employee for any misconduct under the provisions of relevant rules, they cannot prejudge the issue and disallow the service benefits otherwise available to such employee under the provisions of the law. It is apparent that the respondents have denied the benefit of

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temporary status and the consequential rights and privileges arising therefrom to the applicant solely on the ground that the his initial appointment itself was based on the fabricated evidence regarding her date of birth. But in my view, the matter is not concluded. The respondents cannot deny the applicant her rightful claim and keep the applicant in an undoubtedly long state of suspense. There is no denying the fact that although enquiries were completed and the applicant had filed her objections as early as in 1988, no action was taken thereafter for which the applicant could not be blamed. The allegation of fraud is strongly resisted by the applicant. As a consequence of the intervening orders of this Tribunal, the applicant remained engaged as a casual labourer but the applicant is not seeking the benefit in the light of such retention by virtue of this Tribunal's direction. The applicant's claim is relatable to the period much prior to it, as she had already acquired the right of conferment of temporary status by then. During the period under consideration which constituted the eligibility period for the purpose of temporary status, the applicant was not removed from service or put off duty. I am not impressed by the submission that the applicant has been removed from service recently by order dated 30.6.2001 after filing this O.A. This cannot adversely affect the service benefits, rights and privileges attached to the conferment of temporary status to which the applicant became entitled and she acquired the qualifying service, i.e. with effect from 10.7.93. In view of the facts and legal position explained above, I find that

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the applicant is entitled to succeed in the matter of grant of temporary status by way of operation of law. For this preposition support can be drawn from the Apex Court's decision in Rober D'Souza, 1982 SCC (L&S) 124.

6. The contention that the application is hit by bar of limitation has to be rejected in view of the well settled legal position that the benefits available on account of conferment of temporary status would be recurring in nature of and the adverse effect of denial thereof would be felt month after month, and thus the applicant has a recurring cause of action vide the Apex Court's decision in M.R.Guptha's case, AIR 1996 SC 669.

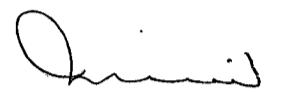
7. I therefore, dispose of this O.A. with the following orders/directions:

The applicant is eligible to be conferred with temporary status with effect from 10.7.93 with all consequential rights and privileges attached thereto. However, the applicant shall receive monetary benefits by way of arrears, if any, with effect from the date of A-2 representation i.e. 2.12.99. The respondents are directed to give effect to the above directions immediately and in any case, within 2 months from the

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date of receipt of copy of this order. There is no order as to costs.

Dated, the 8th April, 2002.



T.N.T. NAYAR  
ADMINISTRATIVE MEMBER

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#### APPENDIX

##### Applicant's Annexures:

1. A-1 : True copy of the Order No.P(S) 443/I/0A 624/95, 636/95 & 645/95 dated 26.8.96 issued by the Chief Personnel Officer, Southern Railway.
2. A-2 : True copy of the representation dated 2.12.99 submitted by the applicant addressed to the 3rd respondent.
3. A-3 : True copy of the representation dated 25.3.2000 submitted by the applicant addressed to the 3rd respondent.

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18.4.02