

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 219/96

Date of Decision : 15.06.1998.

Smt. Mathura Mahadu _____ Petitioner.

Shri D. V. Gangal _____ Advocate for the
Petitioner.

VERSUS

Union Of India & Others _____ Respondents.

Shri V. S. Masurkar _____ Advocate for the
Respondents.

CORAM :

HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

(1) To be referred to the Reporter or not ? *Yes*

(2) Whether it needs to be circulated to *No*
other Benches of the Tribunal.

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 219/96

Dated this Monday, the 15th day of June, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

Smt. Mathura Mahadu,
Residing at -
P.W.I. Palspe,
Panvel,
Dist. Raigad.

(By Advocate Shri D.V. Gangal)

... Applicant

VERSUS

1. The Union Of India through
The General Manager,
Bombay V.T.
2. The Chief Engineer (South),
Construction, Central Rly.,
Bombay V.T.
3. The Dy. Chief Executive
Engineer (Construction),
Central Railway,
Dadar.
4. The then P.W.I. Construction,
Central Railway,
Panvel.

... Respondents.

(By Advocate Shri V. S. Masurkar)

: OPEN COURT ORDER :

¶ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN ¶

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply. I have heard the Learned Counsels appearing on both sides.

2. The applicant has filed this O.A. praying for a direction for her appointment and also with a prayer for regularisation of her services. Her case is, that she was

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appointed as a casual labourer under the respondents with effect from 07.07.1983. Her services came to be terminated on 19.10.1984. She had filed a previous O.A. No. 308/94 challenging the order of termination. That O.A. came to be dismissed on the ground of limitation. The applicant sent number of representations to the respondents seeking employment, but in vain. The applicant is now unemployed. It is also stated that in the previous O.A. a direction was given to the respondents to consider the case of the applicant for appointment by relaxing the age as per rules. On the application preferred by the applicant for fresh appointment, the respondents have rejected the same by an order dated 26.06.1995. The applicant was prepared to go anywhere to work but it has not been considered by the respondents. That the applicant is entitled to be regularised as per Railway Board Circular. That the termination of the applicant in 1984 was contrary to law. That the impugned order dated 26.06.1995 rejecting the claim of the applicant is illegal. On these allegations, the applicant has approached this Tribunal for quashing the order dated 26.06.1995, for a declaration that she has a right to be appointed w.e.f. 26.06.1995 with all back wages and continuity of service and for a direction to the respondents to regularise the service of the applicant.

3. The respondents in their reply have taken the stand that the applicant had unsuccessfully filed the previous O.A. No. 308/94 and the same contentions

which were taken earlier, cannot be reagitated now and, therefore, the present application is barred by principles of resjudicatta. That the respondents have justified the rejection of the applicant's case by order dated 26.06.1995. The applicant's application was for a fresh appointment as a casual labourer and this has been considered and rejected by the department. The question of regularisation of the applicant on the basis of the previous services does not survive for consideration in view of the dismissal of the previous O.A. It is, therefore, stated that the applicant is not entitled to any of the relief claimed for.

4. The Learned Counsel for the applicant contended that the impugned order dated 26.06.1995 is illegal and is not substantiated by any documents by the respondents. He argued that the applicant should be considered and should be employed by the respondents in view of the order passed in the previous O.A. He also argued that the termination of the applicant was bad in law and her services should be regularised on the basis of past services in view of the judgement of the Supreme Court and Railway Board circulars. On the other hand, the Learned Counsel for the respondents supported the stand of the respondents in rejecting the claim of the applicant's fresh appointment under order dated 26.06.1995. As far as other contentions are concerned, the reply is that, the same cannot be re-opened now and is barred by the principles of resjudicatta.

5. The previous O.A. was filed challenging the order of termination of 1984. The said O.A. came to be dismissed by this Tribunal as per order dated 07.11.1994 in O.A. No. 308/94 and it was dismissed on the ground of limitation. Therefore, the applicant cannot now re-agitate the validity or otherwise, of the termination order. Consequently, the question of regularisation of service of the applicant will not arise. The Learned Counsel for the applicant relied on judgement of the Supreme Court in 1991 SCC (L&S) 25 (Jacob M. Puthuparambil & Others V/s. Kerala Water Authority & Others) and the judgement of the Supreme Court in State Of Haryana & Others V/s. Piara Singh & Others (1992 SCC (L&S) 825). Both these decisions are on the question of regularisation of service of casual labourers. But in my view, that point cannot be considered in this case for two reasons. One is, the applicant has urged this contention in the previous O.A. For another, the claim cannot now be considered due to delay, laches and limitation. The applicant's service was terminated in 1984. The present O.A. is filed in 1996. Now, after a lapse of 12 years and without being in continuity of employment, the applicant cannot now say that she should be considered for regularisation. The applicant had a right to claim regularisation in the previous O.A. and she took a chance and challenged, which came to be dismissed and it is too late in ^{now} a day to claim the same relief. Therefore, the applicant's contention now for regularisation cannot be considered at this belated stage.

6. The only point for consideration is, whether the applicant is entitled for fresh appointment? In the previous O.A., what the Tribunal observed was, the application should be dismissed as barred by limitation. Then a request was made by the applicant's counsel that atleast the applicant may be considered for fresh appointment as casual labourer. The Tribunal only observed that the respondents may consider the case of the applicant and if necessary, to condone the age as per rules. As rightly argued on behalf of the respondents, there was no writ of mandamus to the respondents to appoint the applicant. It was just an observation directing the respondents to consider the case of the applicant for a fresh appointment. The applicant had no legal right for being appointed as casual labourer in the Railways.

In pursuance of the observations, the applicant did make a representation to the respondents and they considered the same and by the impugned order dated 26/06/1995 the claim was rejected on three grounds as mentioned in that order, which reads as follows :-

- " (1) The Railway Board vide letter dated 7/6/1984 have imposed restrictions on engagement of fresh faces of casual labour on open line or in the construction Project and further that existing strength as on 1/1/1994 is frozen.
- (2) The Chief Engineer (Construction) has fixed the ceiling limit for continuation of



existing casual labour on this Division comprising Panvel, Vashi and Dadar Divisions. At present the existing strength is much more than the ceiling limit and the labourers are surplus to the requirement.

(3) The Project works on this Division which are deposit works being carried out by Railways for other parties, have been completed and no further casual labour strength can be increased."

The Learned Counsel for the applicant has questioned the correctness and legality of the three reasons given by the respondents in rejecting the representation of the applicant. It was argued that the respondents should have produced all the records of the project to show the existing staff and other details.

After hearing both sides, I find that the Railway Administration has given enough and cogent reasons for rejecting the appointment of the applicant. The Court or Tribunal cannot go into the affairs of the project like the details of number of employees, names of employees, etc. Inspite of the lengthy argument addressed by the Learned Counsel for the applicant, by giving number of reasons, I am not persuaded to agree with him that the order dated 26.06.1995 is illegal or bad in law. The main ground given is that, the department has surplus staff and there is no existing vacancy and, therefore, the applicant could not be appointed.



It is not the case of the applicant applying against any advertised vacancy or regular recruitment so as to challenge the recruitment. It is a case of one person sending just a letter seeking employment and now the applicant wants that the railway should produce all the necessary documents to show as to how her claim was rejected. If the applicant had applied against a regular advertised vacancy or against regular recruitment and if there was anything fishy in the recruitment process, then probably the Tribunal would have called upon the respondents to produce the necessary documents to support their stand. It was just a case of one person sending an application for appointment and that being rejected, comes to the Tribunal and wants this Tribunal to hold an enquiry into the affairs of the project regarding employment, recruitment, etc. The applicant had no legal right to be considered for appointment, since she had not applied against any advertised vacancy or regular recruitment. Hence, I am not impressed by the argument of the Learned Counsel for the applicant about the legality and validity of the impugned order.

7. The applicant, as an unemployed person, has every right to apply to the respondents and as and when vacancies arise and on every occasion, the respondents have a right to consider her case for appointment whenever she applies. However, this does not give a legal right to the applicant that

she should be appointed whenever she applied. Hence, in my view, there is no merit in the application and is liable to be dismissed.

8. In the result, the O.A. fails and is dismissed. Further, this order is without prejudice to the right of the applicant to apply as and when there is vacancy and it is also open to the respondents to consider her case as per rules whenever there are vacancies. In the circumstances of the case, there will be no order as to costs.



(R. G. VAIDYANATHA)
VICE-CHAIRMAN.