

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NOS.: 1100/99, 119/2000, 223/2000
AND 224/2000.

Dated this 6th the _____ day of February, 2001.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Miss Mangala Ananda,
Ex.C.L. of I.O.W. (M),
Kalyan, R/o. 'D' Cabin,
12, Kholi, Kholi No. K/530,
Near I.O.W. Office, C.Rly.,
Kalyan, Dist. Thane
Pin - 421 301.

... Applicant in
O.A.No. 1100/99.

Shri Krishna Shripat Pandit,
Ex.C.L. of I.O.M. (M), Kalyan.
R/o. Venubai Chawl, Wakdi,
Ashok Nagar, Waldhuni,
Kalyan (E), Dist. Thane, (M.S.)
Pin - 421 301.

... Applicant in
O.A.No. 119/2000.

Shri Chindaram Shankar,
Ex.C.L. of I.O.M. (M),
Thane, Railway Quarter No.
RBI/1004/3, Near Waldhuni,
Ambernath Road, Kalyan,
Dist. Thane (M. S.),
Pin - 421 301.

... Applicant in
O.A.No. 223/2000.

Shri Sambhaji Ramrao Mane,
Ex.C.L. of I.O.M. (M),
Ulhasnagar. R/o. Flora
Co.Op Housing Soc. Room No.303,
Near Ulhasnagar Rly. Station,
Ulhasnagar, Dist. Thane (M.S.)
Pin - 421 301.

... Applicant in
O.A.No. 224/2000.

(By Advocate Shri R. D. Deharia)

VERSUS

1. Union of India through
The Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi - 110 001.

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2. The General Manager,
Central Railway,
Mumbai C.S.T.,
Pin - 400 001.
3. The Divisional Rly. Manager,
Central Railway, C.S.T.,
Mumbai - 400 001.
4. Assistant Engineer (Works),
Central Railway,
Kalyan, Pin - 421 301. ... Respondents in
all the 4 O.As.

(By Advocate Shri V. S. Masurkar)

O R D E R

PER : Shri B. N. Bahadur, Member (A).

The above four O.As. being basically similar, they were heard together by consent of both sides, and are being disposed of by this common order. Wherever differences exist, these will be taken note of. For the sake of convenience, we take up the facts in the application of Miss. Mangala Anand (O.A. No. 1100/99).

2. The Applicant is before this Tribunal in grievance against the letter of the Railway Board dated 09.10.1998 (Annexure A-1) and ~~is~~ has also impugned the letter dated 15.07.1999 (Annexure A-2). The facts brought forth by the Applicant are that she was initially engaged as casual Khalasi with effect from 03.05.1978, and continued to work as Casual Labour for periods mentioned in para 4.2 of the O.A. In other words, she contends that during the year 1978 she worked for a total number of 220 days. She was discharged w.e.f. 18.12.1978

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for the reason of lack of sanction. She has constantly approached the Railway Administration for re-engagement but not re-engaged.

3. The Applicant further avers that she was considered for screening for regular absorption in group 'D' category during 1989-90, found suitable and empanelled vide letter dated 27.05.1991 (Annexure A-4). However, despite representations, she was not provided any appointment in Group 'D' category. She claims appointment against post reserved for the S/C community. Further developments in the case are cited, and the point made that she is borne on live register, and hence deserving of appointment. The Applicant thus comes up to this Tribunal in the background of the above grievance, seeking the relief, in substance, that having been found suitable in the Screening process and empanelled in the panel declared on 27.05.1991, she is entitled to be absorbed as a regular candidate in group 'D' category in Engineering Department by obtaining the ex-post facto sanction of General Manager. The Applicant also seeks a direction to Respondents accordingly.

4. The Respondents in the case have filed a written Statement in reply, resisting the claim of the Applicant. It is

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stated that after working for 220 days in broken spells in the year 1978, the Applicant was never in the employment of the Respondents. Thus, the ground of delay and laches is strenuously taken as being in fact, adequate enough for the dismissal of the Application.

5. The Respondents further state, in the Written Statement, that the letters impugned and challenged, cannot be termed to be impugned orders, and that no Service Card Register of 1978 is available. Accepting the contentions made in para 4.3 and 4.4 of the O.A., as being substantially correct, Respondents state that during this Screening of 1989-90, the Applicant was not on Muster Roll and was, therefore, not absorbed as regular Group 'D' staff. Further, after 01.08.1980, no one was considered for daily rate engagement in view of a ban on recruitment on casual labour. C.P.O., C.S.M. was approached for sanction but no sanction was received.

6. It is stated that Applicant's name was not borne on live register, and without prejudice to other arguments, she was also over aged. Further, after 01.08.1980 there was no question of any engagement.

7. I have heard the Learned Counsel on both sides and have perused the records of the case. The Learned Counsel for the

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Applicants in all O.A., Shri R. D. Deharia, first took me to the facts of ~~the~~ ^{the BnB} O.As; and made the point that the cause of action arose only in 1998 because of the issue of the impugned letter dated 09.10.1998. It was contended that Applicant was on live register and that Railway Board's order was not followed. Alluding to the letter dated 16.04.1996 at annexure A-6, it was argued that it is clearly stated in this letter/circular that the names of persons, enumerated therein, were appearing in the live registers ~~(Mrs Mangala Anand's name does appear but other names are not seen).~~ ^{BnB}

8. It is also argued that the ground of over-age taken is an attempt to camouflauge the malafide intentions of Respondents, since Railway Board's orders provide for such contingencies. Further, the Applicant in O.A. 119/00 is not over aged. Learned Counsel sought to take support from the judgement in O.A. 517/98 made by this Tribunal.

9. Arguing the case on behalf of Respondents, their Learned Counsel, Shri V. S. Masurkar, made the point that the relief sought really was the one mentioned at sub para (3) of para (8) of the O.A. He first took up the point of delay and laches, as indeed taken in the Written Statement, and argued that the delay was extra-ordinary. Also, in the copy of record of casual labour

appended, there was no entry of "discharge", to establish the contention that it was Respondents who had discharged them. Learned Counsel cited the Full Bench judgement in the case of Mahavir and Others [2000 (3) ATJ (1)] and even alleged that there was no intention on the part of applicants to work and the first representation was made only in 1998 (Annexure A-7).

10. Arguing on merits, the Learned Counsel for Respondents, stated that there were no original documents and that the veracity of the photo-copies provided (Annexure A-4 lists) could be doubted. The fact probably was that they were not discharged, but had simply abandoned the work, right in 1977-78/relevant years (in different cases as in table below). Learned Counsel stressed the point that a statement has been made by Respondents to the effect that Applicants were not on live register, and that this should be taken cognizance of, and should be taken to be the fact.

11. Let us first set down the basic facts in the four O.As. This information is culled out in the statement below :

Sl. No.	O.A.No.	No. of days Worked.	Sl.No. in letter No. MB/P/Engg/ Screening/C1.IV Dt. 16.04.1996.	Discharge Date.
1.	1100/99	220 (in 1978)	118	18.12.1978
2.	119/2000	783 (1975-77)	108	18.08.1977
3.	223/2000	676 (1980-91)	N.A.	30.06.1991
4.	224/2000	877 (1980-85)	110	18.12.1985

12. It will be essential ^{to first} ~~for me to~~ examine the point relating to limitation, delay and laches. This point has been raised by the Learned Counsel for the Respondents who has sought the support of the ratio in the case of Mahavir & others V/s. Union of India & Others reported in ATJ 2000 SLJ (1). It will be seen from a reading of this Full Bench Judgement, that in case a persons name is not on the live register, then the provisions of Section 21 of the Act will apply. From the facts of the case noted in the tabular statement above, it is seen that, in this regard, the case of Shri Chindiram M. Shankar (Applicant in O.A. No. 223/00) is different from the cases of the other three Applicants, in that, Shri Shankar has admittedly not been screened. He states in para 4.4 of his O.A.(223/2000) that he was not intimated about the screening, and even though he approached the Respondents, he was not considered for screening. The other three Applicants have been screened and found to be fit and have been placed at sl.nos. as recorded against their names in the above statement. This serial number pertains to the list published vide notification dated 20.07.1991.

13. Now, it is obvious that in the case of Shankar (O.A.No. 223/2000) the Full Bench Judgement, in as much as it refers to the point of limitation, delay and laches, will apply and hence, clearly Shri Shankar will be hit by the ratio of this Full Bench Judgement. He would, therefore, not be eligible to the relief that he has sought. In the cases of the other three Applicants, it is to be seen that once they have been screened and found fit, and it being stated in the order dated 16.04.1996 (Exhibit A-6) that their names appear in the live register, then it must follow

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that they will be governed by whatever instructions the Railways have issued and are following in the case of such persons, ~~will~~ *and* ~~apply~~. (The names of the three Applicants, other than Shri Shankar, appears at sl. no. 7, 9, and 17 of the communication of Personnel Branch of Division Office dated 16.04.1996). It is thus not clear as to how a simple statement is made in the written statement by Respondents that names of Applicants do not appear on the live register.

14. It is also not correct, as surmised by the Respondents' Learned Counsel, that these are cases of abandonment by the Applicants. The records produced by the Applicants, as annexures, will need to be given credence in the absence of anything else to the contrary, and specially in the face of the communications of the Railways themselves, as referred to above. Thus, in the case of these three Applicants, the instructions as issued by the Railways from time to time, including the instructions now sought *h* to be depended upon, i.e. letter dated 09.10.1998 (page 15 in O.A. 1100/99) will apply, and will need to be followed. It is also to be noted that Respondents have stated that the case of Applicant in O.A. No. 1100/99 was taken up by the Administration with higher authorities but no decision was forthcoming. The point regarding the age of Applicant in O.A. No. 1100/99 cannot be brushed away, either, in a cursory manner, as has been done in the Written Statement of the Respondents. It will have to be dealt with in accordance with instructions on the subject after due examination.

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15. Regularisation in Group 'D' will therefore have to be examined accordingly in the case of these three Applicants. The reference made to the decision by this Tribunal (O.A. 517/98) by Learned Counsel for Applicant has been noted in this regard.

16. In view of the above discussions, the above four O.As. are disposed of in terms of the orders as below :

(i) O.A. No. 223/2000 i.e. the Application of Shri Chindaram Shankar is hereby dismissed, with no order as to costs.

(ii) O.A. No. 1100/99 O.A. 119/2000 and O.A. 224/2000 :

In these cases, the Respondents are directed to consider the cases of the Applicant in these O.As., on merits and in accordance with law, in terms of the relevant scheme/instructions issued by the Railway Board/Administration from time to time considering among other things, seniority, availability of vacancies and all relevant facts. The decision taken be communicated to the Applicants. However, since the consideration would depend on vacancies available, etc., no time limit is being prescribed. No order as to costs.

06/02/01
(B.N. BAHADUR)
MEMBER (A).