

Central Administrative Tribunal
Mumbai Bench: Mumbai

1. OA No. 227/2000
2. OA No. 318/2000
3. OA No. 319/2000
4. OA No. 320/2000

Mumbai this the rd day of June, 2001.

Hon'ble Mr. Shanker Raju, Member (Judicial)

OA No. 227/2000

Shri Anand Baliram Rane,
R/o Gangaram Plot,
House No. 5/233,
Behind Soparkar Building,
Bhusawal-425 201.

-Applicant

(By Advocates Shri D.V. Ganjal and Sh. S.V. Marne)

-Versus-

1. Union of India through
the General Manager,
Central Railway,
Headquarters Office, Mumbai CST,
Mumbai-400 001.
2. Divisional Railway Manager,
Bhusawal Division,
Central Railway,
Bhusawal-425 201.
3. The Dy Chief Engineer (Const),
Central Railway,
Bhusawal-425 201.

-Respondents

(By Advocate Shri Suresh Kumar)

OA-318/2000

Shri Grijesh Kumar Singh,
R/o Near Akola Dharmashala,
Rajgond Vitthal Mandir,
Bhusawal.

-Applicant

(By Advocates Shri D.V. Ganjal and Sh. S.V. Marne)

-Versus-

1. Union of India through
the General Manager,
Central Railway,
Headquarters Office, Mumbai CST,
Mumbai-400 001.

2. Divisional Railway Manager,
Bhusawal Division,
Central Railway,
Bhusawal-425 201.

-Respondents

(By Advocate Shri Suresh Kumar)

OA-319/2000

Basant Kumar Shukhlal,
Residing at C/o Khawaja Maistri,
Behind Ghausia Masjid,
Kazi Plot,
Bhusawal.

-Applicant

(By Advocates Shri D.V. Ganjal and Sh. S.V. Marne)

-Versus-

1. Union of India through
the General Manager,
Central Railway,
Headquarters Office, Mumbai CST,
Mumbai-400 001.

2. Divisional Railway Manager,
Bhusawal Division,
Central Railway,
Bhusawal-425 201.

-Respondents

(By Advocate Shri Suresh Kumar)

OA No.320/2000

Sayyad Nazir Sayyad Bashir,
R/at Nasarwanji File,
Hindustani Masjid,
Bhusawal.

-Applicant

(By Advocates Shri D.V. Ganjal and Sh. S.V. Marne)

-Versus-

1. Union of India through
the General Manager,
Central Railway,
Headquarters Office, Mumbai CST,
Mumbai-400 001.

2. Divisional Railway Manager,
Bhusawal Division,
Central Railway,
Bhusawal-425 201.

-Respondents

(By Advocate Shri Suresh Kumar)-

O R D E R

Mr. Shanker Raju, Member (J):

All the applicants in these OAs are similarly circumstanced with common grievance of non-consideration of their names for regularisation. As the common question of law is involved in all the cases, they are disposed of by this common order.

2. The applicants in these OAs have assailed the action of the respondents whereby their request for regularisation has been rejected on the ground that they are over-aged. In OA-227/2000 the only difference is that the applicant therein was not a party to OA No.517 and 830 of 1998, wherein the applicants who are also applicants in OAs 318, 319 and 320 of 2000 have agreed to restrict their claim only for future regularisation as per Railway Board's letter issued in 1998. The applicants, at one point or the other, had worked as casual labour^uers. The applicant in OA-227/2000 had worked for 432 days and his name figured in the live register. The applicant in OA-318/2000 had put in 1112 days of service as a casual labour under the respondents. In OA-319/2000 the applicant had put in 953 days of service and in OA-320/2000 the applicant had put in 587 days of service with the respondents. The names of the applicants had been figuring in the live register. The applicants in OAs 318, 319 and 320 of 2000 have approached this Tribunal in OA-517/98 and this Court keeping in view the statements of applicants that they

will not press any other relief and restrict their claim for future regularisation issued directions to the respondents to consider them for regularisation as per the scheme of the Railways after verifying their names in the live register and taking into consideration their seniority, suitability and eligibility for the purpose of screening and to consider the same when vacancies are to be filled up for Group 'D'. The applicants in these OAs have contended that despite their names being existing in the live register they have not been considered for regularisation whereas their juniors have been regularised in the year 1990. On enquiring from time to time it has been apprised by the respondents that their services would be regularised. The services of the applicants have been dispensed with in 1988 and onwards. The applicants have stated that the respondents on 9.10.98 issued an order providing for preparation of live and supplementary live register to consider the casual labours for regularisation in Group 'D' category and for this a notice has been put up. The applicants submitted their applications giving details of their service rendered but the request has been rejected on the ground that they had become over-aged and had failed to complete three years of continuous service as prescribed by a letter issued by the Railway Board on 11.1.99^u, where for direct recruitment to Group 'C' and 'D' employees serving employees who have put in three years continuous service on the Railways have to be given age relaxation upto 40 years for general

candidates and 43 years of OBC and 45 of SC/St. The grievance of the applicants is that they had rendered requisite period and had to be conferred temporary status automatically on completion of 120 days of service and despite having their names in the live casual labour they have not been considered for regularisation and despite directions of the Court their cases have not been considered and were arbitrarily rejected on the ground of their being over-aged. The learned counsel of the applicant contended that in view of the Railway Board's letter dated 9.10.98 they have been accorded an opportunity for regularisation by way of subjecting them to screening and other formalities and their cases have been rejected by taking resort to an amended para 115 (iv) of the IREM Volume I whereby the age limit is relaxable upto 40 years in the case of general category candidates, for OBC it is 43 and for SC/ST it is 45. The applicant though not challenged the vires of this para challenged the legality of this para but by referring to para 2006 of the IREM have made two fold submission, first that while computing three years of service and according relaxation one year service which has been taken on the basis of 365 days but not on the basis of 240 days constituting one year as prescribed under 25-B of the Industrial Disputes Act of 1947. The applicant further contended that as the vacancies had arisen in the years 1975 and 1976 and 181 posts are to be filled up for Group 'D' the amended para of Railway Board's letter dated 11.1.89 and 1.6.89 will have no

retrospective effect. It is also contended that the aforesaid letter applies only for the purpose of direct recruitment to Group 'C' and 'D' whereas the applicants are seeking regularisation and in that event para 2003 of the IREM would be applicable which prescribes that if a casual labour has been enrolled within the prescribed age limit relaxation in the upper age limit at the time of absorption should be automatic and as the applicants have been initially engaged within the prescribed limit of 25 years are entitled to age relaxation. According to them the age relaxation for absorption is automatic under the para *ibid*.

3. The respondents in their reply have rebutted the contentions of the applicants and contended that except OA-227/2000 the applicants have raised a similar grievance in OA-517/97 and restricted their claim for future vacancies as such the OA is filed on the same cause of action seeking identical reliefs and as such is barred by *res judicata*. It is further contended that as the applicants after their services have been dispensed with have not come for relief at the appropriate time within the period of limitation and now staking the claim for 1995-96 vacancies the same would be barred by limitation. In these OAs it is stated that due to enhancement of retirement age from 58 to 60 years the review of the vacancies have been conducted and previous recruitment was dropped as observed in the court's order dated 28.1.99 *supra*. As the applicants have failed to

confirm to the requisite criteria and were not found suitable due to being age barred, the request for regularisation has been turned down and the applicants were individually informed by placing reliance on an order passed by this Tribunal in OA-504/99 on 17.4.2001 in Manohar Papa Barse v. Union of India it is contended that the identical issue regarding age relaxation had come up before the court wherein the applicant had completed 1036 days of service which was less than three years and was age barred on 29.1.98. The Tribunal placing reliance on the supporting documents to show that one year is treated as equivalent to 365 days upheld the validity of para 115 (iv) of IREM, as modified and held that in the case of ORC candidate the age is relaxable upto 43 years and is to be accorded to those persons who have put in three years continuous service. As the applicant therein failed to complete three years of service the relief was denied to him. Similarly taking resort to this order it is contended that the applicants herein have by application of the provisions of 365 days constituting an year have failed to put in three years continuous service and as the maximum age limit for ORC is 36 and for general 33 which can be relaxed upto 40 years and 43 years respectively, one of the applicants being a general candidate and more than 40 years of age on 1.4.99 and as he has not completed three years continuous service his case has been rejected. As the applicants in OA-517/98 have restricted their claim for future regularisation they

cannot stake any claim over the post existing in the year 1995-96. Referring to para 115 (iv) of the IREM it is contended that the same also applies to serving casual labours and as this circular is not challenged the same is legally tenable. As far as the provisions of Rule 2006 of IREM are concerned, it is contained that absorption of casual labours in regular Group 'D' is to be considered in accordance with the instructions issued by the Railway Board from time to time and is not automatic but depends upon the availability of vacancies and suitability/eligibility of the individual casual labour and class III is not an integral part of the para *ibid*. Placing reliance on the decision of the Apex Court in P.R. Subramaniam v. Union of India, AIR 1978 SC 284 it is contended that the Railway Board's letter issued in the year 1999 over-rides the provisions of para 2006. General provisions of IREM would have no application.

4. In the rejoinder the applicants re-iterated is contentions taken in the OA and further contended that the case is not hit by *res judicata* as on directions by the Court the cases of the applicants have been considered not in accordance with the rules and were rejected by confirming them through individual cases as such this gives them a fresh cause of action which has not been prayed in the previous OA. It is further contended that the decision of the Tribunal referred to by the respondents in OA-504/99 would have no

application as it is per incuriam on the provisions of para 2006 of IREM. The applicants further contended that their cause of action had arisen in view of the circular issued by the Railway Board in the year 1998 and the applicant had not been considered and their cases have been rejected in 1999. As such the application is within the limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985.

5. As far as the plea of res-judicata is concerned, I find from the record of OA-517/98 that the applicants have sought relief of re-instatement and regularisation retrospectively from the date vacancies are existing but during the course of the arguments the applicants have restricted their claim to the future vacancies as such the claim of the applicant with respect to the vacancies arising prior to 1999 would be hit by the doctrine of res judicata. The applicants are estopped from challenging the action of the respondents by not according them regularisation prior to 1999 and the same had been agreed to by the applicants and have not pressed the prayers. If the prayers have not been pressed in the OA and by voluntary statements the same were foregone they cannot challenge the same, as the cause of action and reliefs in the present OA would be barred by the doctrine of res judicata as well as constructive res judicata.

6. As regards the issue of limitation is concerned, I find that the applicants have staked their claim for regularisation in view of the Board's letter issued in the year 1998 and in pursuance of the directions issued by the Tribunal in OA-517/98 supra the respondents have considered their cases and rejected their request for regularisation by individually informing on or about 11.5.99 and the present OAs have been filed within one year from the date of the said orders and as such are within the prescribed period of limitation as prescribed under Section 21 of the A.T. Act.

7. The challenge of the applicants to the provisions of amended para 1154 of IREM on the ground that the same will not be applicable retrospectively would be of no avail to them as the applicants' cause of action had arisen only after the Railway Board's letter was issued in the year 1998 regarding live casual labour register as well as supplementary rules and in pursuance they applied for the post and at the time of consideration and screening to be held the respondents have issued an amendment in para 115 (iv) IREM *ibid*, whereby a continuous three years' service has been made an essential qualification for consideration for regularisation to Group 'C' and 'D' vacancies the applicants' claim that the service rendered by them should be reckoned for the purpose of counting years equivalent to 240 days rendered in any year as prescribed under Section 25-B of the Industrial Disputes

Act, is not legally sustainable in view of the ratio laid down by the Tribunal in OA-504/99 to which I agree to and follow the same ratio in the present case. Apart from it in absence of any challenge to para 115 (iv) the applicants cannot claim the reliefs and regularisation by-passing the aforesaid circular. Although we find that in the aforesaid OA the same has been decided without taking into consideration the provisions of para 2006 IREM but the same would not help the applicants as even as per para 2006 IREM the same would have no application to the case of the applicants as in accordance with the provisions of IREM the observation is not automatic and is subject to availability of vacancies and eligibility of individual casual labour. The provisions of Railway Board's letter in view of the ratio laid down in Subramaniam's case would certainly over-ride the provisions of Rule 2006. The provisions of 2006 (3) have to be harmoniously read with the general principles of para 2006 IREM and would not be applicable in the case of the applicants.

8. As regards the plea of the applicant that para 115 (iv) with reference to the absorption of casual labour is concerned, I do not agree with the contention of the learned counsel of the applicants and find that in this para it has been specifically stated that the serving employees who have put in three years continuous service

would be given age relaxation and in my considered view the same also applies for absorption of casual labour as per Railway Board's letter issued in 1998.

9. I find from the individual cases that the applicants have failed to confirm to para 115 (iv) and have not completed continuous service of three years and would have no claim to the vacancies after 1999 and in that event para *ibid* would be applicable. The applicants in their respective categories do not confirm to the maximum period of age limit prescribed therein and are not entitled for any age relaxation, regularisation cannot be claimed as a matter of right as before being considered the incumbent has to confirm to the eligibility criteria laid down under the rules. As the applicants are not found qualified to be considered for absorption/regularisation the action of the respondents by rejecting their claim cannot be found fault with and confirms to the rules prescribed therein.

10. Having regard to the above discussion and reasons recorded we do not find any merit in the claims of the applicants. The OAs are, therefore, dismissed, but without any order as to costs.

11. Let a copy of this order be placed in the case file of each OA.