

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1105/93

Date of Decision: 29.1.98

Smt. Meenakshi Naguram _____ Applicant.

Shri D.V.Gangal _____ Advocate for
Applicant.

Versus

Union of India and others _____ Respondent(s)

Shri V.S.Masurkar _____ Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman.

Hon'ble Shri. M.R. Kolhatkar, Member (A)

- (1) To be referred to the Reporter or not? *W*
- (2) Whether it needs to be circulated to *W*
other Benches of the Tribunal?

R.G.Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI : 1

Original Application No.1105/93

Friday the 29th day of January 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri M.R. Kolhatkar, Member (A)

Smt. Meenakshi Naguram
Casual Labour, working
under Permanent Way
Inspector, Jasai
Dist. Raigad and residing
at the same place. ... Applicant.

By Advocate Shri D.V.Gangal.

V/s.

Union of India (Through
The General Manager
Central Railway,
Bombay V.T.

The Deputy Chief Engineer
(Construction)
Central Railway
Dadar, Bombay.

... Respondents.

By Advocate Shri V.S.Masurkar.

O R D E R (ORAL)

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman

This is an application filed under
Section 19 of the Administrative Tribunals Act 1985.
Respondents have filed reply. We have heard counsels
for both sides.

2. Applicant's case is as follows:

The applicant was earlier working under
Railway Administration. Her services were terminated
illegally. Then she filed O.A. 120/91. That
application was allowed. Then the respondents [redacted]
issued fresh appointment order under which the
applicant came to be appointed, but the respondents
have not given the benefit of past service to her
for the purpose of fixation of salary etc. The
applicant had already acquired temporary status

for the previous service and she is entitled to the said benefit even if she joined the post under the new appointment order. Therefore, she wants that she should be declared entitled to be treated as an employee having temporary status from the date of her re-appointment. She also wants a declaration of being entitled to the benefit of past service as continuous service without break.

3. The respondents had filed reply opposing the application. According to the respondents the applicant was given fresh appointment in view of the directions of the Tribunal in the previous case. Therefore, the applicant is not entitled to any of the reliefs prayed for in this application.

4. The applicant was a Casual Labour and since she was absent for sometime, the respondents appeared to have terminated her service orally. This came to be challenged by the applicant by filing the previous O.A. In the previous order passed by this Tribunal dated 9.9.91 in O.A. 120/91, it is pointed out that the applicant had acquired temporary status and therefore her service should not have been terminated even for the unauthorised absence without holding departmental enquiry. This Tribunal has noticed that the counsel for the applicant has made a statement at the Bar that the applicant will be satisfied if she will be given fresh appointment. In view of this statement made at the Bar and the facts and circumstances of the case the Tribunal in the operative portion of the order gave a direction to the respondents to consider the case of the applicant for fresh appointment in the next

available vacancy, after relaxing the age limit.

The learned counsel for the applicant contended that inspite of the order, the applicant is entitled to the benefit of past service. He emphasised the words used in the previous order as " same capacity". In our view the "same capacity" is in the same post of Casual Labour^{er} in which the applicant was working. The order of the Tribunal was for a fresh appointment and that too if a vacancy arises. It was not the case that the applicant was given the benefit of past service; that is why the counsel for the applicant made a submission at the time of argument, that the applicant will be satisfied if she is given fresh appointment. After the order of the Tribunal the respondents have issued an appointment order. There also it is clearly mentioned that the applicant is appointed as fresh face in the post of Khalasi which means in the " same capacity" in which ~~she was~~ working earlier. The applicant cannot therefore claim the benefit of past service when she was appointed afresh.

5. The learned counsel for the applicant placed reliance on para 2005 of the Railway Establishment Manual and invited our attention in particular for relevant portion on page 14 of the paper book. It is mentioned that when Casual Labour^{er} who has attained temporary status and has been paid regular scale of pay, when re-engaged, after having been discharged earlier on completion of work or for non-availability of further productive work, may be started on the pay last drawn by him. The respondents pointed out in their reply that this

Rule is applicable only when the termination was under those two grounds mentioned therein namely completion of work or for non-availability of further production work. It is nobody's case that the applicant was terminated on these two grounds. On the other hand, the respondent's case is that the applicant was unauthorisedly absent for quite a long time and the applicant was terminated ^{and} therefore the applicant cannot get the benefit of past service when she has been appointed as fresh face by the impugned order of appointment. Since the direction given in the previous judgement is that the applicant should be appointed as fresh candidate in the same capacity as Reja in the next available vacancy, now the applicant cannot turn around and say that she is entitled to the benefit of past service. The application is not maintainable and is liable to be dismissed as devoid of merits.

6. In the result the application fails ~~is dismissed~~.
However in the circumstances of the case there will be no order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

R.G. Vaidyanatha

(R.G. Vaidyanatha)
Vice Chairman

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