

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 1151/93

Date of Decision: 24/8/99

Smt. Rewa Jwalaprasad

Applicant.

Shri D.V. Gangal

Advocate for  
Applicant.

Versus

Union of India & 2 Ors.

Respondent(s)

Shri S.C. Dhawan

Advocate for  
Respondent(s)

CORAM:

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

Hon'ble Shri. S.L. Jain, Member(J).

- (1) To be referred to the Reporter or not? No
- (2) Whether it needs to be circulated to other Benches of the Tribunal? No

B.N. Bahadur

abp.

(B.N. BAHADUR)  
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO:1151/93.

DATED THE 24TH DAY OF AUGUST, 99.

CORAM:HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

HON'BLE SHRI S.L.JAIN, MEMBER(J).

Smt.Rewa Jwalaprasad,  
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.

The Union of India  
Through

1) The General Manager,  
Central Railway,  
Bombay V.T.

2) Dy.Chief Engineer(Construction),  
Central Railway,  
Dadar

... Respondents.


By Advocate Shri S.C.Dhawan.

I ORAL I I ORDER I

I Per Shri B.N.Bahadur, Member(Administrative) I

This is an application made by Smt.Rewa Jwalaprasad  
seeking the relief as follows:-

- a. To hold and declare that the applicant is  
entitled to be treated as a temporary status  
employee from the date of her reappointment.
- b. To hold and declare that the applicant is  
entitled to treat break in service as  
continuous without salary.
- c. Grant any other relief in the interest of

 justice for which act of kindness the applicant

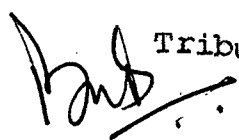
shall as in duty bound over pray.

2. We have heard the learned counsels on both sides. At the start of the arguments, learned counsel <sup>sought</sup> for applicant stated that the substantial relief/is that on the re-engagement of applicant, she should be given temporary status and the same pay that she was drawing when engagement was terminated. The facts of the case in chronological order have been stated by the applicant in the application at para-4. They also emerge from the judgement in OA filed by same applicant delivered by this Bench on 28/10/92(OA-384/92).

3. Learned counsel for the applicant strenuously contended that applicant's case was of re-engagement, and as such she was entitled to the benefit accorded to her by clause-f of para-2005 of IREM, Vol.I.

"A Casual labour 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. (This shall be effective from 2nd October, 1980)."

4. This is the main basis of the contentions put forth by the applicant's counsel. In regard to the respondent's points made in the written statement that this was a fresh appointment given in view of a judgement in the OA referred to above, counsel for applicant argued that re-appointment and fresh appointment did not have different meanings in this context and that the rule cited above would cover the case of the applicant irrespective of the reason by which the reappointment was given i.e. whether

 Tribunal order or otherwise.

5. Arguing the case on behalf of respondents, the learned counsel made the following points in gist.

- (a) The application was barred by Principles of res-judicata as the applicant should have made this prayer in OA-384/92. The cause of action was the same then and the relief sought now should have been claimed at that time in accordance with the law well settled in this regard.
- (b) Counsel for respondents asserted that this was a case of *denovo*, *fresh*, appointment which was made in pursuance of a clear order given in OA-384/92 by this bench.
- (c) The order of fresh appointment made no mention of intervening period of service and this was a clear indication that the order was for fresh appointment.
- (d) The respondents counsel <sup>BnB</sup> ~~also~~ went through the order of this Tribunal and also contended that sub para-f of para-2005 of IREM Vol.I was not applicable to the case of the applicant.

6. On an analysis of the facts of the case it is seen that the text of the judgement delivered in OA-384/92 is important. It is clear from this judgement that there was a condonation of delay but the Tribunal stated as under:-

"However, in view of the fact that the applicant had worked for about 2 years as casual labour and she is willing to work even now in that capacity, we entertain this application."

*BnB*

7. It is also clear from the order that the respondents were directed to consider the case of the applicant for fresh appointment on merits and in accordance with law. Thus the <sup>mind</sup> ~~point~~ of the Tribunal was totally clear, in that it had given a direction for a fresh appointment which was to be in accordance with the rules operating. Infact, a hope had been expressed, in the same paragraph, by the Tribunal to the effect that the bar of age would not come in the way of the applicant. Thus, there was no direction regarding reengagement in terms of what is envisaged in the letter and spirit of the rule quoted above(sub para-f of para-2005 of IREM, Vol.I).

8. Even ignoring points regarding res-judicata advanced by Counsel for respondents, on merit also it cannot be said that the contents of sub para (f) of 2005 of IREM provide any convincing ground to the applicant for being restored to temporary status.

9. Thus no protection of the type envisaged by the applicant can be available to her. The order in the OA of this Tribunal dated 28/10/92 is clear; it is also clear that the respondents acted on this direction fairly, and thus no case is made out for the provision of reliefs to the applicant as sought by her.

10. In view of the above discussions, this application is hereby dismissed. No orders as to costs.

*S.L. Jain*  
(S.L.JAIN)  
MEMBER (J)

*B.N. Bahadur*  
(B.N.BAHADUR)  
MEMBER (A)

abp.