

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO. 6, 4TH FLR, PRESCOT RD, FORT,

MUMBAI-400 001.

ORIGINAL APPLICATION NOS; 517/98 & 830/98.

DATED THE 28TH DAY OF JANUARY, 1999.

08/12/98 CORAM: Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman.

1. Shri Sanjay Kirtikar
2. Shri Sk. Gafur Sk. Rannu
3. Shri Nathumiya Manjur Patel
4. Shri Sk. Kalu Sk. Chand
5. Shri Dilip Vishram Chaudhari
6. Shri Jangulal P. Patil
7. Shri Laxman Ramnath
8. Shri Arun Babulal
9. Shri Raju Dula
10. Shri Sd. Najir Sd. Bashir
11. Shri Kailas Sitaram
12. Shri Arun Hansraj
13. Shri Ab. Habib Ab. Hafij
14. Shri Nathu Chindhu Chaudhari
15. Shri Chandrakant Baburao
16. Shri Subhan Ganga Gavli
17. Shri Nandu Gambir Singh
18. Shri Brijesh Kumar Singh
19. Shri Chandrakant Govind
20. Shri Dilip Narsingh
21. Shri Naim Ali
22. Shri Dilip Laxman
23. Shri Rajendra Ram Singh Thakur
24. Shri Chandrakant Narayan
25. Shri Amir Shah
26. Shri Sk. Babu Sk. Mohomed.
27. Shri Mohan Ramnath
28. Shri Garibdas Amirdas
29. Shri Vasantkumar Suklal
30. Shri Pavitra Rugdhar Gardia

C/o. Shri Sanjay Kirtirao Kirtikar,
Behind Nahata Bank,
Near Satara Bridge,
Bhusawal, Dist. Jalgaon.

... Applicants in
OA-517/98.

1. Shri Bharat Sajannath
2. Shri Pramod Rambhau

... Applicants in
OA-830/98.

By Advocate Shri D.V.Gangal.

v/s.

1. The Union of India,
through The General Manager,
Central Railway,
Mumbai CST.
2. The Divisional Railway Manager,
Central Railway,
Bhusawal.

... Respondents in
OA-517/98 & 830/98.

By Advocate Shri V.D.Vadhavkar.

X O R D E R X

[Per Shri R.G.Vaidyanatha, Vice Chairman]

These are two applications filed by respective applicants for regularisations of their service in the Railways and for other reliefs. Respondents have filed reply opposing both the applications.

I have heard Learned Counsel appearing on both sides.

2. In both the cases, the learned counsel for applicants submitted that he is pressing the /, only for future regularisation of applicants as per Railway Board circular. For the purpose of this relief now pressed before me, the factual position is that the applicants in both the cases had worked as Casual Labourers in the Railways. Their services were terminated sometime in 1991 or 1992. But the applicants case is that since they had worked for some period as casual labours they are entitled to be absorbed as per Railway Boards circular from time to time. They have also relied on the order of this Tribunal in the previous case dated 31/10/95 in OA-801/92. It may be mentioned here that only applicants in OA-517/98 were the applicants in the previous OA. The other two applicants /

in OA-830/98 were not parties to the previous OA.

3. The respondents in the reply have not disputed that the applicants had worked in Railways previously. There stand is that the applicants are not on roll as on today or as on the date of application and therefore the applicants are not entitled to be regularised. It is admitted that there are vacancies in the Department and certain steps were taken for direct recruitment and now it has been dropped. It is also stated that now the new situation has arisen due to enhancement of age of Superanuation from 58years to 60years and therefore the review of vacancies has to be done by department. It is also stated that the review will show as to what would be existing number of vacancies and then department must take a decision to fill up certain posts bearing in mind the economy consideration, etc. The respondents have also stated that the applicants are not entitled to any retrospective regularisation and backwages.

4. In view of the submissions, at the bar, the only question for consideration is whether the applicants in both the OAs are entitled to regularisation as per scheme of Railways or not.

The latest circular dated 9/10/98 is at page-55 of paper-book, which says that Casual Labour borne on Casual labour live registers are entitled to be considered for regularisation depending on the number of days put in by them as casual labourers. Therefore, there cannot be any dispute that casual labours who had worked for certain period are entitled to be regularised as and when vacancy occurs and when they are to be filled up. We need not go into the details since in the previous OA No.801/92, in the order dated 31/10/95, we find that though the application came to be dismissed, the respondents made a statement which has been recorded at the end of para-3

that

"as and when the vacancy arises and when the applicants come within the zone of consideration in the seniority list, their services will be regularised subject to screening and other formalities that has to be carried out before regularisation."

Therefore, the respondents themselves have admitted that the applicants in that case would be regularised subject to availability of vacancies and subject to screening, etc.

5. It may be noted that in previous OA there were 29 applicants but in the present two OAs, we are concerned with 32 persons. That three persons in the present OA were not parties in the previous OA.

As long as the names of the applicants appear in the casual labour live register, they are entitled to be considered for regularisation as per Railway Board scheme. Hence, we need not attach any importance to casual labour roll as on today which is pressed into service in the reply of the respondents. The only requirement is that the names of the applicants should find a place in the live register of casual labour. I do not want to give exact finding, but leave the matter to respondents to consider the case of applicants, if their names appear in the live register and according to seniority and the actual period they have worked.

6. Another submission at the bar is that they must review the actual number of vacancies and then administration must take a decision to fill up vacancies and then only the cases of the applicants can be considered.

On the other hand, the learned counsel for applicant submitted that the advertisement for direct recruitment did show the existence of the vacancies and

now that direct recruitment has been dropped, there is no difficulty to regularise all the applicants in the available vacancies. On this point, the well settled position is that even if there are vacancies a Court or Tribunal cannot give a command to the administration to fill up vacancies. Whether to fill up the vacancies or not is a policy decision of administration. But once they choose to fill up then naturally the right of the applicants comes into play.

7. As per the Railway Board circular, the respondents will have to hold a screening test to find out whether the applicants names appear in the live register and whether they ^{come} in the zone of consideration.

Another submission at the bar was that the applicants had worked in the Commercial Department, and hence they should be considered for regularisation in the existing vacancies which are available in the Commercial Department and then if there are surplus number of applicants, then they should be considered for other departments.

8. The learned counsel for respondents submitted that no direction can be given for regularisation in a particular department but the department would consider them as per rules. The learned counsel for applicant brought to my notice the Central Railway circular dated 1/10/96 which is at page-24 of the paper book. There also it is mentioned indicating that the candidates should be normally screened and regularised departmental wise. In case the number of candidates are in surplus they should be considered for regularisation in other departments.

9. In the light of the above discussion, I feel

that it is a fit case in which respondents should be directed to consider the case of the applicants for regularisation as per scheme of the Railways.

9. In the result, both the OAs are allowed as follows:-

1. The respondents should consider all the applicants in both the OAs for regularisation as per scheme of the Railways after checking their names in the live register and taking into consideration their seniority and then suitability and eligibility for the purpose of screening as per rules.
2. As and when the vacancies are to be filled up for Group 'D' posts in the Commercial Department, the names of the applicants after screening be considered and in case they are in surplus, for that department, then their names may be considered alongwith others for other departments.
3. In the first instance, the respondents may first undertake the work of screening for Commercial Department and complete it within Four months from the date of receipt of copy of this order. Then the administration may take up the work of filling up vacancies as and when there are vacancies and they decide to fill them.
4. In the circumstances, there will be no orders as to costs.

abp.

(R.G.VAIDYANATHA)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

1) REVIEW PETITION NO.13/99
IN
ORIGINAL APPLICATION NO.517/98
2) REVIEW PETITION NO.16/99
IN
ORIGINAL APPLICATION NO.830/98

TUESDAY . THIS THE 23rd DAY OF MARCH, 1999.

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

1. Union of India through
General Manager,
Central Railway,
Mumbai CST.
2. The Divisional Railway Manager,
Central Railway,
Bhusawal.

...Petitioner
(Original Respondents
in both the R.Ps)

V/s.

Shri Sanjay Kirtikar and 29 Ors.
Shri Bharat Sajannah & Anr.

...Respondents.
(Original Applicants
in OAs 517 & 830/98)

: ORDER ON REVIEW PETITION BY CIRCULATION :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

These are two Review Petitions filed by the original respondents in O.A.Nos. 517/98 and 830/98 for reviewing the common order dt. 28.1.1999 passed by me in OA Nos.517/98 and 830/98. I have perused the contents of the R.Ps and the entire case file of the both the O.As.

2. By order dt. 28.1.1999, this Tribunal has given certain directions to the respondents to consider the case of the applicants for screening for the purpose of regularisation and then applicants can be appointed and regularised

as and when there are vacancies and the administration wants to fill those vacancies.

By way of these R.Ps. the petitioners (original respondents) want this Tribunal to review and recall the order dt. 28.1.1999 and then keep the O.As. for fresh final hearing and disposal. I have gone through the allegations in the R.Ps.. but I do not find that any case is made out for reviewing the order dt. 28.1.1999.

3. I have considered the relevant rules and given certain directions. There is no apparent error on record. There is no allegation of discovery of any new material for the purpose of seeking review. No other sufficient grounds are urged for reviewing the order dt. 28.1.1999. Therefore, in my view, no grounds are made out within the meaning of Order 47 Rule 1 CPC to get the order dt. 28.1.1999 reviewed. If the Review Petitioners (original respondents) are aggrieved by the order dt. 28.1.1999. their remedy is elsewhere and not certainly by way of Review Petition. The scope of Review Petition is very limited and should conform to the requirements of Order 47 Rule 1 CPC. Hence, I find no merit in the R.P. The Review Petitioners have also filed M.Ps. 206/99 & 214/99 for condonation of delay in filing the Review Petitions. Since on merits, I find that no case is made out for granting review, the question of condonation of delay does not arise at all.

4. The review petitioners contention is that the Railway Administration has to take policy decision to fill up the post and then only screening will have to be done. In order to avoid further delay, a direction has been given so that the screening can be done and the list of eligible candidates can be prepared. As and when the administration decides to fill up the posts, these screened candidates can be posted there without any further delay. I have also observed in the original order that the names of all the applicants should be checked up in the Live Register of the Railway Administration and then it should be found whether they are eligible for regularisation or not as per the scheme of the Railway Board. Then, the list of eligible candidates among the applicants should be prepared. The question of giving postings

depends upon the decision of the administration to fill up the posts. Therefore, as and when the Railway administration decides to fill up certain posts, then they can make use of the select list and issue orders. Therefore, I do not find any merit in the Review Petition so as to recall the order passed on 28.01.1999.

4. In the result, both R.Ps.13/99 & 16/99 and M.Ps.206/99 & 214/99 filed by the Review Petitioners (original respondents) are rejected by this order on circulation.

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.