

35

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.197/99

DATE OF ORDER : 30-09-1999.

Between :-

1. M.Mangala Mary
2. K.Kamalamma

... Applicants

And

The Financial Adviser & Chief Accountg
Officer, Rail Nilayam, SC Rlys, at
Sec'bad.

... Respondent

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Counsel for the Applicants : Shri G.Abdul Khadar

Counsel for the Respondents : Shri K.Siva Reddy, SC for Rlys

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CORAM:

THE HON'BLE SHRI JUSTICE D.H.NASIR : VICE-CHAIRMAN

(Order per Hon'ble Justice Shri D.H.Nasir, Vice-Chairman).

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... 2.

(Order per Hon'ble Justice Shri D.H.Nasir, Vice-Chairman).

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The two applicants in this O.A. seek a declaration that inaction on part of the Respondents in not regularising the services of the applicants in FA & CAO Office, SC Rlys, Sec'bad was illegal and void and to consequently direct the Respondents to regularise their services in their previous post.

2. The applicants worked as Casual Labourers under Hot Weather Establishment in FA & CAO's office. The first applicant was employed from 8.4.1985 to 1.6.1990 and the second applicant from 18.4.1985 to 9.5.1991 without any break. The applicants represented to the Respondents for regularisation of their services as was done in the case of other casual labourers. However under one pretext or the other, according to the applicants, the Respondents kept on postponing the matter and finally terminated the services of the applicants in 1990 and 1991 respectively. The applicants kept on representing before the authorities in the SC Rlys for providing employment to them but there was no response. Finally the applicants caused a legal notice to be issued to the Respondents asking for regularisation of their services but the respondents paid no heed to the applicant's representation.

3. Opposing the applicant's case the respondents in their counter affidavit raised several contentions that while processing the cases for regularisation of casual labourers in Hot Weather

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Establishment the Respondent Railways took sufficient care to enlist all those who completed 120 days of regular service commencing from 1.1.1985 and it was found that 38 casual Labourers had completed 120 days of regular service. They were sent for Medical Examination and thereafter based on vacancy position regularisation had been done in favour of those who fulfilled the prescribed norms as applicable at that point of time for regularisation of Group-D post. The norms, according to the Respondents were as follows :-

- (a) The incumbent should have completed 120 days of regular service;
- (b) Those who were below 28 years of age in case of 'OC' and 33 in case of 'SC/ST' candidates were to be considered;
- (c) Those who had educational qualification up to 8th standard would be eligible.

4. The applicant No.1, Smt. Mangla Mary was initially engaged as Hot Weather Establishment labourer during summer season on 16.4.1981 according to the Respondents. However the applicant No.1 was found ineligible as she was overaged by two years. Further according to the Respondents the upper age limit for recruitment to Class-IV was 28 years as per Railway Board letter dated 11.8.1979 (Annexure R-II to the reply statement). The case of the applicant No.1 therefore could not be considered for absorption in Group-D category. By her letter dated 19.12.1997 she represented to the Respondents for absorption on the ground that there were no rules under which over aged casual labourers cannot be absorbed into Railway Service when they were over aged

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at the stage of appointment.

5. As far as applicant No.2 is concerned Smt.K.Kamalamma, the respondents have taken a stand that she worked as casual labourer in Hot Weather Establishment in the Accounts Department and that initially she was engaged on 20.4.1981 and worked in different spells in the subsequent summer seasons. In view of the conditions issued under Annexure R-I to the counter affidavit, she along with other Water women who had completed 120 days of regular service were sent for medical examination. Further according to the Respondents those who had been declared medically fit were asked by the Administration to submit original certificates to verify whether they fulfil the norms even for such absorption into Group-D posts.

6. The second applicant, according to the Respondents, ^{who} was declared to be medically fit but she admitted in her letter on 24.6.1991 (Annexure R-IV to the counter) that she was "illiterate" and therefore she was not considered for absorption in the Accounts Department.

7. It is further stated by the Respondents in their counter affidavit that the Administration ^{has} [✓] taken sufficient care in providing them alternative engagement. The Railway Board considering staff side demand of organised Unions vide their letter No.E(NG)II/84/RR-1/26 dated 26.4.1993 kept in abeyance their earlier directions regarding educational qualifications for absorption to Group-D vide their letter dated 31.7.1985 and 13.9.1985 till further orders, but according to the Respondents

second applicant never submitted any representation during all these years. Hence the administration presumed that those who had not represented were engaged else where or were not interested to be absorbed in Group-D cadre. However on 20.3.1997 the applicant No.2 represented to Railway Administration after lapse of six years for absorption in Accounts Department stating that some of those who had worked along with her had been absorbed. On receipt of her representation and on verifying the records it was noticed that there were several discrepancies in the applicant's statements about her educational qualifications and her Father/Husband's names and it was evident that she had given contradictory statements regarding her educational qualifications. It was for this reason that her representation had not been considered by the competent authority.

8. From the above contentions raised in the counter affidavit, it appears that as far as Applicant No.2 was concerned, the main aspect was pertaining to her educational qualifications. However, having regard to the fact that the requirement with regard to educational qualifications had been relaxed, a lenient view was required to be taken in her case. In her earlier spell of appointment, the applicant No.2 did not give the respondents any cause to believe that lack of minimum educational qualification created any infirmity in the performance of her duty. In our opinion therefore, even if relaxation was not made, lack of prescribed educational qualification does create any infirmity on her case for regularisation.



9. It is pertinent to note that the first applicant joined the Respondents on 16-4-1981. In the counter affidavit in para-14 it is recorded that her date of birth was 24.12.1950 and therefore her age was 31 years when she joined. From Annexure R-2 (produced by the Respondents) it appears that upper age limit for recruitment to Class IV category the Ministry of Railways had decided that the upper age limit should be 28 years. In the norms for absorption in Group-D posts, those who are below 28 years of age in case of OC and 33 in case of SC/ST candidates, as stated in para-5(b) on page-4 of the counter affidavit. However, unlike Kamalamma (second applicant) Mangala Marry has not produced any material that she was SC/ST candidate. In her application dated 24-3-1988 she has left blank column in which particulars whether SC/ST are required to be mentioned, and therefore even if her age on the date of first entry is concerned, she cannot be retrieved from the age bar of 28 years. No such plea is taken in the OA nor any rejoinder affidavit is filed by applicant No.1 claiming the benefit available to SC/ST on the question of age bar.

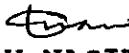
10. The bar of limitation also comes in the way of the applicants because after their termination in 1990 and 1991 they should have made a written representation to the Respondents within a reasonable time, and they should have taken this proceeding before the expiry of one year from the completion of six months from the date of their representation, which procedure has not only been not followed, but no effort is

made to satisfy the Tribunal whether there was any sufficient cause for delay. A mention made in para-6(d) that Lawyer's notices were sent in September, 1998 does not go to the rescue of the applicants because such lawyer's notices issued after a lapse of more than 7 years does not produce the effect of reviving the limitation.

11. On merits therefore the applicants have no case but the Respondents may reconsider the case of both the applicants sympathetically keeping in view the fact that both the applicants have served the Department for more than five years giving due weightage for the past length of service and the experience gained by them. Since we have held that the applicants do not succeed on merits, no time limit could be set for compliance.

12. The O.A. is accordingly disposed of. No order as to costs.

13. The Registry is directed to forward the copy of the present OA along with its accompaniments to the respondents to enable them to take into consideration the contentions raised by the applicants in this O.A.


(D.H.NASIR)
Vice-Chairman

Dated: 30th September, 1999.

25/10/99 92
FOR AND TING COURT

COPY TO :-

1. HONORABLE JUDGE
2. HONORABLE MR. (A)
3. HONORABLE M. (A)
4. D.R. (A)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HONORABLE MR. JUSTICE D.H. NASIR
VICE - CHAIRMAN

THE HONORABLE MR. R.R. RANGARAJAN :
MEMBER (ADMN.)

THE HONORABLE MR. S.S. JAI PARAMESWAR
MEMBER (JUDL.)

* * *

DATE OF ORDER: 30-10-99

MA/PA/CP.NO.

IN

CA. No. 197199

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

CP CLOSED

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS

6 copies
A/w O.A.m

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद / DESPATCH

27 OCT 1999

हैदराबाद न्यायालय
HYDERABAD BENCH