

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

14.12.2007

Smt. Ambika vs. UOI

OA No. 538/2005

Mr. Surendra Kumar Saini, proxy counsel to
Mr. Rajveer Sharma, counsel for the applicant

For the reasons dictated separately, the OA is
disposed of on merits.

Tarsem Lal
(TARSEM LAL)

Admv. Member

(M.L.Chauhan)
(M.L.CHAUHAN)
Judl. Member

R/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 14th day of December, 2007

ORIGINAL APPLICATION NO.538/2005

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER

Smt. Ambika w/o Khatru,
r/o Village Boregaon, Post Roopraroad,
Distt. Bandikui, at present working as
Khallasi (Class-IV Employee)
in the West Central Railway,
Railway Station Chomela,
Division Kota.

.. Applicant

(By Advocate: Shri Surendra Kumar Saini, proxy counsel
to Mr. Rajveer Sharma)

Versus

1. Union of India
through General Manager,
West Central Railway,
Jabalpur
2. Divisional Railway Manager,
West Central Railway,
Kota Division,
Kota.
3. Assistant Engineer (Construction),
Store, W.C.Railway,
Jaipur

.. Respondents

(By Advocate:---)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- a) by an appropriate order or direction and order or command Your Lordship may be pleased to direct the respondents to amend and modify the impugned order dated 29.11.1997 (Ann.A/1) and respondents may kindly be directed to regularize the applicant in Group-D cadre since her initial appointment dated 21.9.1985 with all consequential benefits. The respondents may be directed to treat the applicant as permanent sine 21.9.1985.
- b) by an appropriate order or direction the respondents may kindly be directed to consider the applicant for promotion in Group-C as Class-III employee by counting her service as permanent since the date of initial appointment dated 21.9.1985 with all consequential benefits.
- c) the respondents may kindly be directed to promote the applicant in Group-C from any appropriate date which may be decided by this Hon'ble Tribunal.
- d) Any other relief which this Hon'ble Tribunal deems fit and proper may kindly be granted to the applicant.

2. Brief facts of the case are that the applicant was initially engaged as Khallasi on 21.9.1985. After completion of 360 days service as on 21.9.1986, she was granted temporary statue w.e.f. 21.9.1986 in terms of Railway Board letter No.E/NG/34 dated 11.9.86. Further she was granted temporary status as Fitter/Khallasi in the scale Rs. 196-232 vide X.En/C./I Kota letter No. RC/BD/E6 15/4 dated 23.4.87. These facts can be gathered from Ann.A3, which the applicant has appended with the OA. However, as per averment made in the OA, the applicant has pleaded

that she was appointed as Khallasi on 21.9.85, however her services were regularized in Group-D category vide order dated 29.11.1997. The applicant has prayed that her services may be regularized in Group-D w.e.f. her initial appointment i.e. 21.9.85. It is further pleaded that she was not aware about regularization of her services vide order dated 29.11.1997 and she only came to know this fact in response to notice dated 22.7.2005, as such, according to the applicant, the OA is within limitation.

3. This case was filed by the applicant on 16.11.2005. Thereafter the matter was adjourned from time to time and till date no notice has been issued on this OA. When the matter was listed on 26.9.2007 this Tribunal has passed the following order:-

"This OA was presented before this Tribunal on 16.11.2005 but till date no notice has been issued in this case. Let the matter be listed on 14.12.2007, on which date appropriate order will be passed."

Again the matter is taken up for admission today.

4. We have heard the learned proxy counsel for the applicant as the original counsel was not available. We are of the view that the present OA is wholly misconceived and deserves to be dismissed at admission stage for more than one reason.

From the facts as stated above, it is evident that the applicant was appointed as casual Khallasi on

21.9.1985. Admittedly, her appointment was on daily wage basis and she was not selected against a regular post in accordance with established procedure. However, she was conferred temporary status after completion of 360 days of service as on 21.9.86 and consequent upon conferment of temporary status she was granted regular scale of Rs. 196-232 (R) Fitter/Khallasi vide letter dated 23.4.87. It may be stated that regular scale is being granted to casual labour in terms of the scheme and without there being any regular post. However, the services of the applicant were subsequently regularized w.e.f. 29.11.1997 after following the due procedure and when the regular post was available. The applicant has not made any grievance for regularization of services when temporary status was granted on 21.9.86 and even thereafter when her services were regularized from prospective date on 29.11.1997. Admittedly, cause of action, if any, has arisen in her favour in the year 1985-86 or in the year 1997 when her services were regularised. The contention of the applicant that she was not even aware about her regularization against Group-D post in the year 1997, cannot be accepted as perusal of Ann.A1 reveals that her services alongwith 31 other persons were regularized on the recommendation of the Screening Committee and the applicant is drawing regular scale of Group-D post w.e.f. 29.11.97. Thus, the plea taken by the applicant

that said order was not communicated to her cannot be accepted, as copy of Ann.A1 was also endorsed to the concerned employee as per Sl.No.6 of the endorsement. The applicant has taken this plea solely with the purpose to bring this case within limitation. Thus the present OA has to be dismissed on the ground of limitation as the cause of action in favour of the applicant has arisen in the year 1985-86 when her services were continued on daily wage basis and in any case in the year 1997 when she was aware that her services were regularized against Group-D post w.e.f. 29.11.97 alongwith other 31 persons (Ann.A1).

Besides it, granting relief to the applicant with retrospective effect will not only affect 31 officials whose services have been regularized alongwith the applicant vide Ann.A1, but it will also affect other persons who have been regularized during the period 21.9.85 to 29.11.97 and who are not parties in this case. As such, the applicant is not entitled to any relief, even if, the applicant has made out any case on merit on account of delay and laches and also that they the applicant has acquiesced with the situation.

That apart, as already stated above, the applicant has also not made out any case for grant of relief, even on merit. Admittedly, daily wage workers are engaged in contingent establishments where there is no post and continue to work so long as the work

exists. Appointment of daily wager is never against any post. The learned counsel has failed to show any provision of law where the services of a person can be regularized from back date without there being any post and when no procedure as established under law which was meant for filling up the post on regular basis, was ever followed.

Even otherwise also, the matter on this point is no longer res-integra and the law on this point has been laid down by the Apex Court in the case of The Divisional Manager, APSRTC and Ors. vs.. P.Lakshmoji Rao and Ors., 2004(1) SC SLJ 343 whereby the Apex court has held the persons who was appointed as Conductors on daily wage basis and their service has been regularized within reasonable time, cannot claim regularization from anterior date as there is no service rule/regulation or any principle of law which authorize regularization from anterior date. Thus, viewing the matter from the law laid down by the Apex Court in the case of P.Lakshmoji Rao (supra) and the fact that the applicant was engaged on daily wage basis without there being any post and she was also conferred temporary status in the absence of post, it is not permissible to regularize her services from anterior date.

5. For the foregoing reasons, the OA is dismissed at admission stage. No costs.

Tarsem Lal
(TARSEM LAL)

Admv. Member

M.L.Chauhan
(M.L.CHAUHAN)
Judl.Member

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