

(Reserved on 13.03.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD**

This the **09th** day of *April, 2018*.

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

Original Application Number. 330/00574/2012

Kamta Prasad, son of Kashiram, resident of house no. 25/33(172),
Isai tola, Premnagar, Jhansi, District - Jhansi.

.....Applicant.

VER S U S

1. Union of India through its General Manager, North Central Railway, Jhansi.
2. Divisional Railway Manager, North Central Railway, Jhansi.
3. Senior Division Personnel Officer, North Central Railway, Jhansi.
4. Divisional Engineer (Work) Bridge and Flood, North Central Railway, Jhansi.

.....Respondents

Advocate for the applicant : Shri R.K. Shukla

Advocate for the Respondents: Shri P. Mathur

ORDER

By means of the present original application the applicant has prayed for a direction to the respondents to consider him for absorption and appoint him on a Group – D post as per the scheme for absorption of casual employees issued by the Railway Board.

2. The facts of the case, as per the O.A are that the applicant was initially engaged as Casual Labour (Khalasi) and worked in different spells from 21.04.1984 to 18.05.1984, 21.05.1984 to 18.10.1984, 20.12.1984 to 18.02.1985 and 09.06.1985 to 18.10.1985 under the Work Inspector, Bridge and Flood, Jhansi. Thereafter, he was engaged as casual Waterman on 21.04.1988 and worked upto 20.07.1988 and from 24.04.1989 to 22.07.1989. It is submitted that he completed 519 days of working as casual labour. The applicant was also issued Casual Labour Card No. 102265 (Annexure A-1 to the O.A). It is stated that the respondents prepared a list of casual labourers in which his name was mentioned at Sl. No. 77. It is stated that the applicant belongs to Scheduled caste (Annexure A-2 to the O.A) and is 8th class passed (Annexure A-3 to the O.A.). The Railway Board vide its Notification dated 11.05.1999 (Annexure A-4 to the O.A) instructed the zonal authorities to prepare the list from casual labour register for absorption. To determine the upper age limit of the ex-casual labourers born on live casual register / suppl. Live casual labour register the cut off date was fixed as 01.04.1999. The upper age limit for general candidates was fixed as 40 years, OBC 43 years and SC/ST 45 years as on 01.04.1999. It is further submitted that the The date of birth of the applicant is 05.05.1959 and at the time of engagement he was about 25 years and 39 years 10 months 26 days as on 01.04.1999. Vide notification dated 28.02.2001 (Annexure A-5 to the O.A), the Railway Board

issued the scheme for absorption of ex-casual labourers whose names are on live/ suppl. Live casual labour register. This circular was modified by the Railway Board vide Circular dated 20.09.2001 (Annexure A-6 to the O.A) to the effect that the age relaxation can be given to ex-casual labourers who had worked for minimum 120 days whether continuous or in broken spells. Thereafter, the respondent No. 2 issued a letter dated 30.08.2001 (Annexure A-7 to the O.A) for assessing the number of eligible casual labour available in the register. Pursuant to the letter dated 30.08.2001, the applicant submitted his particulars on the prescribed proforma on 24.09.2001 before respondent No. 4. The respondent No. 2 vide letter dated 30.09.2001 forwarded the particulars of 18 persons after completing verification of application as well as live / suppl. live casual register. When the applicant was not called for medical examination he submitted representation dated 26.05.2003 before respondent No. 3 (Annexure A-10 to the O.A) .

3. It is stated in the O.A that the application of the applicant was received by the respondent No. 4 on 24.09.2001 and in the list sent vide letter dated 31.09.2001 and his name was placed at Sl. No. 10. Hence, the applicant was entitled to be considered for absorption under the scheme circulated by the Railway Board. The applicant has relied on an order dated 28.07.2011 passed by this Tribunal in O.A No. 1407/2010 filed by one Shri Bhaiya Lal

(Annexure A-11) in which this Tribunal held that the respondents cannot reject the candidature of the applicant on the ground that the application was not received through the depot incharge.

4. It is further stated in the O.A that the applicant filed a representation dated 05.10.2011 (Annexure A-12 to the O.A) and having received no response, the applicant has filed the instant O.A on the ground that the applicant submitted his application before respondent No. 4 on 24.09.2001 and he is having required minimum eligibility criteria. It is further stated that the action of the respondents is against the RBE 42 of 2001 dated 28.02.2001. It is contended in the O.A that the particulars submitted by the applicant to the last depot incharge was to be sent before respondent No. 2 after the verification from live casual labour register. It is also stated that the exercise of screening as well as absorption is a continuous process as per the RBE No. 42 of 2001 untill the list of ex-casual labour who are eligible and still born on live/suppl. live casual labour register is exhausted, or till the regularization scheme is withdrawn by the Railway Board.

5. The applicant had filed a delay condonation application alongwith O.A and the respondents had filed a detailed objection to the said delay condonation application. In the affidavit filed in support of Objection, the respondents stated that as per the

Railway Board letter dated 28.02.2001, the respondents have already taken necessary action and finalized the panel in the year 2003-04 after screening of the applications received as per the letter dated 28.02.2001. It was further submitted that the applicant has stopped working since July 1989 after working as Seasonal Waterman. Hence, the O.A has been filed in 2012 after an inordinate delay. It was submitted that since the applicant was not on the roll after 1989, his case cannot be considered for regularization as per the Railway Board letter dated 28.02.2001. His representation dated 26.05.2003 was also filed at a belated stage. In support of the contentions, the respondents have enclosed order of Hon'ble Allahabad High Court in Civil Misc. Writ Petition No. 45739/2005 dated 31.08.2006 at Annexure No. 1 of the Affidavit filed in support of Objection.

6. In the rejoinder affidavit, the applicant submitted that he had submitted his biodata to his last depot incharge (S.S.E, Works, Jhansi) on 24.09.2001 in response to the notification dated 30.08.2001 issued by the respondents as per the Railway Board letter dated 28.02.2001, giving 30 days time, i.e. till 30.09.2001. The screening process started in 2003, but the applicant was not called for the screening.

7. Heard learned counsel for the applicant who submitted that although the applicant had submitted his application as per the notification dated 30.08.2002 and he was eligible for consideration, he was not considered for screening and hence the applicant was discriminated. In support of the applicant's case, learned counsel for the applicant filed a copy of the judgment of the Tribunal dated 27.11.2009 in O.A No. 1421/2009 and submitted that the applicant's case being similar may be decided accordingly.

8. Learned counsel for the respondents submitted that the applicant's name was not there in the roll as he had stopped working since 1989. It was further submitted that the applicant was in any case overage by the time the Screening Committee considered the applications and he would not have been eligible for being included in the panel on the ground of age as by the time Screening Committee took up the case in 2003-04, the applicant was already overage. It was further submitted that the Notification dated 30.08.2001 (Annexure A-7) was to assess the number of ex-casual labourers who will be eligible for screening and it was not an employment notice as stated in the Notification dated 30.08.2001. Learned counsel also filed a copy of the judgment dated 04.02.2016 in Writ - A No. 1006/2016 where similar issue was considered by the Hon'ble Allahabad High Court in favour of the respondents.

9. I have considered the submissions and the pleadings of both the parties. The delay condonation application was considered and the delay was condoned by this Tribunal vide order dated 03.12.2015.

10. The question to be decided in this case is whether the applicant's case can be treated similar to the case of the applicant in OA No. 1407 of 2010 which was disposed by this Tribunal vide order dated 28.07.2011 (Annexure A-11 to the OA). In the OA No. 1407, the applicant had submitted his application in response to the notification dated 30.08.2001 and a receipt was obtained by him. When his case was not considered by the screening committee, he filed OA No. 500 of 2007 which was disposed of with a direction to the respondents to consider the case of the applicant and pass a speaking and reasoned order. Then the respondents considered the representation and passed an order dated 19.01.2010 rejecting the candidature of the applicant in OA No. 1407/2010 on the ground that it was not received in time through the department head. This rejection order was challenged in the OA No. 1407/2010 and this Tribunal while disposing of the OA No. 1407/2010, held that the ground for rejecting the candidature of the applicant was not correct and the respondents were directed to consider his case as per the scheme. It is noted that by the time the applicant in OA No. 1407/2010 challenged the inaction of the

respondents on his application for the first time in 2007, his age was around 45 years as his date of birth was 20.03.1962.

11. In the present OA, the applicant did not challenge the inaction of the respondents on his application till 2012 when the present OA was filed by him and by 2012, the applicant was more than the maximum age for SC candidates i.e. 45 years fixed by the Railway Board for eligibility for consideration of ex-casual labourers as the applicant's date of birth is 05.05.1959. Hence, the facts in the present OA are different from the facts in the OA No. 1407/2010.

12. The respondents in their objection affidavit have filed the judgment dated 4.02.2016 Of Hon'ble Allahabad High Court in Civil Misc. Writ- A No. 45739 of 2006 (Annexure to the Objection filed by the respondents), where it was held that:-

“..... Considering all the arguments advanced before the learned Tribunal the claim of regularisation was not found suitable as they stood stood disengaged about 10 years ago, and secondly question of re-engagement, in terms of the Circular issued by the Railways on 28.2.2001, was not found feasible as all the petitioners have been overage in view of the said order dated 28.2.2001.....

We do not see any cogent reason to interfere with the same judgment and order, rather the judgment of the Hon'ble Supreme Court in Union of India & Ors. Vs. Mukesh Srivastava & Ors., (1997) 11 SCC 554 and Ram Chander & Ors. Vs. Additional District Magistrate & Ors., (1998) 1 SCC 183, provided that a person who is not in service cannot claim relief of regularization.....”

13. In the case of Union of India and 4 others vs. Ashok Kumar and 8 others in Civil Writ –A No. 1006 of 2016 cited by the respondents' counsel, Hon'ble Allahabad High Court in a similar

case where this Tribunal had passed order dated 06.11.2015 directing the Railway authorities to declare the screening test result and if the applicants would be successful, then they should be regularized after giving post facto approval of age relaxation. The direction for relaxation of age was challenged by the Railways in the above Writ petition, where Hon'ble Allahabad High Court after a detailed discussion about the position of law and the rights of the ex-casual labours, set aside the order of the Tribunal mainly on the ground that their regularization will be in violation of rules and conditions stipulated in the letter dated 28.02.2001 of the Railway Board and has held as under:-

“Brief facts giving rise to the present writ petition are that the respondent nos.1 to 8 (in short "contesting respondents") were ex-casual labourers in the Railway Department. They have put in more than 120 days' continuous service on several times and their names were found in the casual live register and consequently they were eligible for screening and regularisation. In pursuance of the notification dated 17.12.2005, they applied for their regularization. They were called for screening test and their screening test was conducted in the month of October, 2007. When their result had not been declared by the petitioners, they sought direction to declare their result of screening test and also prayed for regularisation of their services as per existing Rules, if they are found successful in the screening test. It is reflected from the record in question that the contesting respondents, in this regard, earlier filed O.A. No.1315 of 2009 for similar relief, which was disposed of by the Tribunal on 17.12.2009 with direction to the competent authority to consider and pass reasoned and speaking order on their representation. As per the directives issued by the Tribunal, the Divisional Railway Manager had considered their claim and rejected the same vide order dated 14.2.2010 applying the ratio of the judgment of Hon'ble Supreme Court in Secretary, State of Karnataka & Ors. v. Umadevi & Ors., (2006) 4 SCC 1.

Aggrieved with the same, the contesting respondents had proceeded to approach the Tribunal by means of Original Application in question with following reliefs:-

- "(i) to quash rejection order dated 14.02.2010 passed by the respondent no.2 (Annexure A-1).*
- (ii) to direct the respondents to declare the result of the screening test held in the month of October, 2007 in pursuance of the notification dated 17.12.2005 (wrongly written as 17.12.2003) (Annexure A-4).*
- (iii) to direct the respondents to regularize the services of the applicants as per the existing rules and to provide them duty in case they are found successful in the aforesaid screening test.*
- (iv) Any other order or direction to which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case also be passed.*
- (v) to award cost of the application to the applicants."*

After exchange of the affidavits, the Tribunal has proceeded to allow the said O.A. vide order dated 06.11.2015 with following observations:-

"Accordingly, the OA is allowed and impugned order dated 14.2.2010 (Annexure-A-1) passed by respondent no.4 is quashed. The respondents are further directed to declare the result of screening test held in the month of October, 2007 in pursuance of notification dated 21.12.2005. In case the applicants are found successful in the screening test after giving post facto approval or age relaxation as has been done earlier, they must be considered for regularization as per their service record and according to rules. The respondents are directed to declare the result of screening test within a period of two months from the date of receipt of certified copy of this order. No order as to costs."

The approach of the Tribunal is that the case of Uma Devi (Supra) is not applicable in the instant case as the applicants have put in more than 120 days' continuous service at several times and their services are liable to be regularised as per the provisions contained in Railway Rules 2001, 2003 and 2004 of Chapter XX of IREM Vol.II.

.....

The casual labours are governed by the statutory provisions and instructions issued by the Railway Board from time to time. It is relevant to indicate that time to time the Railway Board issued instructions on the subject "Absorption in Railway of Ex-Casual labour borne on the live/ supplementary live Casual Labour Registers" vide Letter No.E (NG) II/99/CL/19 dated 28.02.2001 (R.B.E. No.42/2001) wherein the minimum educational qualification has been laid down as 8th passed for Ex-casual labours (except those who have worked as Gangman) borne on Live/ Supplementary Live Casual Labour Register. In Para 2 of the aforesaid letter dated 28.02.2001, the Railway Board has issued instructions in regard to age relaxation applicable to Ex-Casual Labour on Live/ Supplementary Live Casual Labour Registers, which is extracted below:-

"Further in terms of Ministry of Railway's letter No.E (NG) II/91/CI/71 dated 25.07.91, age relaxation to the extent of service put in as Casual labour/ Substitute subject to upper age limit of 40 years in case of General candidates and 45 years in the case of SC/ST candidates not being exceeded, may also be granted in the case of Casual labour & Substitutes for recruitment against Group-C & Group-D posts. The OBC candidates will also get age relaxation up to the upper age limit of 43 years, as has been granted to the serving OBC employees vide Rly. Board's letter No.E (NG) II/95/pml/1 dated 1.6.1999."

Consequently, the Railway Board further considered the matter of age relaxation to Ex-Casual Labours borne on live/Supplementary live casual Labour Registers and issued the detailed guidelines in Letter No.E (NG) 11/99/CL/19 dated 20.09.01, which reads as under:-

"Sub: Absorption in the Railways of Ex-casual Labour borne on the live/ supplementary live casual labour registers.

- 1. In terms of para 6 of this ministry's letter dated 28.2.2001, relaxation of upper age for absorption of Ex- casual Labour borne on the live/ supplementary live casual labour registers has been allowed up to 40 years in the case of general candidates, 43 years in the case of OABC and 45 years in the case of SC/St candidates, provided that they have been put in minimum three years service in continuous spell in broken spells as per instructions contained in this ministry's letter No. E (NG) II/91/CL/71 dated 25.7.91, read with their letter No. E (NG)1/95/PM-5/1 dated 11.1.1999.*

.....
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As per the Railway Board's letters dated 28.02.2001 and 20.09.2001, the age relaxation to the extent of service put in as Casual Labour/ Substitute, subject to upper age limit of 40 years in case of General Candidates and 45 years in the case of SC/ST candidates not being exceeded, may also be granted in the case of Casual Labour & Substitutes for recruitment against Group-C & Group-D posts. The OBC candidates will also get age relaxation upto the upper age limit of 43 years, as has been granted to the serving OBC employees vide Rly. Board's letter No.E (NG) II/95/pml/1 dated 1.6.1999 and which clearly provides that ex-casual labour, which becomes eligible as a result of above modification will be considered for absorption with prospective effect.

On the directives issued by this Court, the department/petitioners has come up with clear stand that in the past no post facto age relaxation had ever been accorded in favour of casual labours beyond the age prescribed by the aforesaid Rules. In this context, they have also relied upon the judgment passed by this Court in Writ Petition No.21799 of 2006, mentioned above.

Once this is the categorical stand, then the Tribunal has definitely proceeded on the wrong premise with the finding that some persons were accorded age relaxation and regularisation in 2010. From the perusal of the details regarding the age of the contesting respondents, this much is reflected that all have crossed 50 years and consequently in the light of the Railway Board's Letter dated 28.2.2001 and 20.9.2001, no positive directions can be issued in their favour. Moreover, the regularisation can never be claimed as a matter of right as has been held by Hon'ble Supreme court in the case of Vindon T v. University of Calicut, 2002 (4) SCC 726 and Mahendra L. Jain & Ors. v. Indore Development Authority & Ors., (2005) 1 SCC 639. Hon'ble the Apex Court in Government of Orissa & Anr. v. Hanichail Roy & Ors., (1998) 6 SCC 626 has considered the case, where the Apex Court had granted the relaxation of service conditions. The Apex Court held that the Court cannot take upon itself the task of the statutory authority. The same view has also been reiterated by the Hon'ble Apex Court in Secretary, State of Karnataka v. Uma Devi (Supra). It is relevant to indicate that in Writ Petition No.21799 of 2006 (Union of India & Ors. v. Ajai Kumar & Ors.),

a review application was filed by Shri Ajai Kumar and the Division Bench of this Court vide order dated 3.12.2011 had proceeded to dismiss the review application holding that where the Rules provide for maximum relaxation of eligibility including the age, the Courts do not ordinarily issue directions to exercise discretion to go beyond that maximum limit. Hon'ble the Apex Court in Uma Devi (Supra) had proceeded to observe that there cannot be recruitment to the regular posts dehorse the recruitment rules and therefore the applicant cannot claim that he is entitled for regularisation.

The Court also finds substance in the contention of the petitioners that under Rule 157 of the Railway Establishment Code, Volume-I, which has been framed by His Excellency the President of India under Article 309 of the Constitution of India and has got statutory force, the General Manager has been provided rule making authority for the condition of service of the Group 'C' and 'D' Employees, thus the instructions issued by the Railway Board regarding absorption, recruitment and promotion in respect of Group 'D' employees have got statutory force. The same has also been upheld by Hon'ble Apex Court in the case of B.S. Vadera v. Union of India, AIR 1969 SC 118, the relevant part of which is extracted below:-

"The Indian Railway Establishment Code has been issued, by the President, in the exercise of his powers," under the proviso to Art. 309. Under Rule 157 the, President has directed the Railway Board, to make rules, of general application to non-gazetted railway servants, under their control. The rules, which are embodied in the Schemes, framed by the Board, under Annexures 4 and 7, are within the powers, conferred under Rule 157; and, in the absence of any Act, having been passed by the 'appropriate' Legislature, on the said matter, the rules, framed by the Railway Board, will have full effect and, if so indicated, retrospectively also. Such indication, about retrospective effect, as has already been pointed out by us, is clearly there, in the impugned provisions.

In view of above, the Court is of the considered opinion that Railway Board being the competent authority has issued various instructions from time to time in respect of service conditions of Group 'D' and Group 'C' staffs, in continuation of the same the matter of age relaxation in respect of Ex-Casual Labourers and working Casual labour was considered and number of Railway Board letters has been issued for granting age relaxation as well as regarding eligibility criteria. As per the Railway Board Circular dated 28.2.2001 in continuation of the Railway Board's letter dated 25.7.1991, age relaxation was further fixed as upper age limit of 40 years in case of General

candidates; 45 years in case of SC/ST and 43 years in case of OBC and the same has also been granted in case of Casual/ substitute Group 'C' and Group 'D' posts. As such the Ex-Casual Labours are entitled to be considered in the light of the aforesaid Railway Board Letters and the incumbents' claims are liable to be considered for absorption with prospective effect. The Railway Board is rule making authority for Group 'C' and 'D' employees in view of Rule 157 of the Railway Establishment Code, Volume-I, thus, above instructions, which have been issued for absorption/ regularisation of ex-causal labours/ Group 'D' employees and once the Hon'ble Apex Court in series of judgments had categorically held that Railway Board has got rule making authority, then the same has statutory force and having binding effect.

Consequently, we are of the opinion that the contesting respondents are over age and as such no positive directives can be issued by the Tribunal for absorption under the existing Rules. Once the report of Screening Committee has already been brought on record through supplementary affidavit, whereby all the contesting respondents have failed and relying on the judgment passed by this Court in Ajai Kumar (Supra), we are of the considered opinion that the directions issued by the Tribunal are in futility and issuance of such direction is not permissible in law and as such the contesting respondents are not entitled for any relief. The direction issued by the Tribunal is in contravention of the scheme framed by the petitioners and the Court is of the considered view that the Tribunal cannot pass such an order, which is impermissible in law."

14. In view of the judgment of Hon'ble High Court as cited by the respondents and extracted above, relaxation of age beyond the age for different categories as stipulated by the Railway Board for regularization of ex-casual employees is not permissible. In this case by the time the applicant approached this Tribunal against the failure of the respondents to consider his application submitted in pursuance to the notification dated 30.08.2001 (Annexure A-7) by filing this OA in the year 2012, he was already overage, unlike the case of the applicant in the OA No. 1407/2010

cited by the applicant's counsel. Hence, applying the ratio of the judgment of Hon'ble Allahabad High Court discussed in para 13 of this order, there is no scope for this Tribunal to interfere in the matter.

15. In view of above discussions, the applicant has failed to provide justifications for his case. Hence, the OA being devoid of merit, is liable to be dismissed. Accordingly, the OA is dismissed. No order as to the costs.

(GOKUL CHANDRA PATI)
MEMBER- A.

Anand...