

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00787/2016

Friday, this the 12th day of April, 2019

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

1. P.V.Ramanan,
S/o.K.P.Sundaran,
Retd. Office Peon,
Railway Higher Secondary School,
Hemambika Nagar, Palakkad – 678 009.
Residing at Vaishnavam, Santhinagar,
N.S.S.Engineering College Post, Palakkad – 678 008.
2. A.Manoharan,
S/o.T.Bhaskaran Nair,
Technician Gr.III, Southern Railway,
Carriage & Wagon, Palakkad Railway Station.
Residing at Midhun, Padassala Street,
Thekke Gramam P.O., Chittor, Palakkad – 678 103.
3. Titus P.K.,
S/o.P.G.Koshy Vaidhyan,
Commercial Clerk, Station Manager's Office,
Southern Railway, Trivandrum Central Railway Station.
Residing at Palavila Mercy Cottage,
Mundakkal East, Kollam – 691 001.
4. P.Harinakshi,
D/o.P.Karunan,
Retd. Technician Gr.III, Southern Railway,
Carriage & Wagon, Mangalore Railway Station.
Residing at Gurukriba Compound, Southerpet,
Vth Cross, Kankanady, Velentia, Mangalore – 575 002.
5. G.Charles,
S/o.Gnana Sandaran,
Technician Gr.III, Carriage & Wagon,
Southern Railway, Mangalore Railway Station.
Residing at JES Nivas, Kungoor,
Kulasekhar P.O., Mangalore – 575 005. ...Applicants

(By Advocate – Mr.T.C.Govindaswamy)

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v e r s u s

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.
2. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.
3. The Senior Divisional Personnel Officer,
Southern Railway, Thiruvananthapuram Division,
Thycaud P.O., Thiruvananthapuram – 695 014.
4. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat – 678 002.
5. The Secretary to the Government of India,
Ministry of Railways, Rail Bhavan,
New Delhi – 110 001.

...Respondents

(By Advocate Mr.Millu Dandapani)

This Original Application having been heard on 8th April 2019, the Tribunal on 12th April 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

The applicants are erstwhile employees of the quasi-administrative offices/organizations (Co-operative Societies) connected with the Railways, who are later regularized as regular employees. Applicant Nos.1 & 4 had since retired from Railways while working in the Palakkad Division of Southern Railway as Office Peon and Technician Gr.III respectively. Applicant Nos.2 & 5 are presently working as Technician Gr.III in the Palakkad Division of Southern Railway whereas the Applicant No.3 is presently working as Commercial Clerk in the Thiruvananthapuram Division. The grievance of the applicants in the O.A pertains to orders passed by the 2nd respondent treating Applicant Nos.1, 2, 4 & 5 as direct

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recruit employees with effect from 26.12.2008 and Applicant No.3 with effect from 3.12.2008 which is contrary to the directions contained in Annexure A-6 order of this Tribunal which directs that the applicants are to be treated as directly recruited employees with effect from 1.7.1990. The reliefs sought in the O.A are as follows :

1. Call for the records leading to the issue of Annexures A-1 to A-5 and quash the same.
2. Direct the respondents to implement Annexure A-6 orders of this Hon'ble Tribunal duly deeming the applicants to have been regularized as regular employees of the Railways with effect from 1.7.1990 with all consequential benefits emanating therefrom.
3. Award costs of and incidental thereto.
4. Pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal.

2. The applicants refers to para 10 of Annexure A-6 order of this Tribunal wherein it has been held as follows :

“10. In C.A.2492-2493 of 1998, the Supreme Court had upheld the CAT decision to absorb the workers of Cooperative Society as direct recruit regular employees of the Railways with effect from 1.7.1990. The same order mutatis mutandis be made applicable to the applicants in this case also. The Apex Court did not order the counting of service rendered in Cooperative Stores before 1.7.1990 and hence the same is also not made applicable to the applicants in this O.A. The Apex Court in C.A.No.5274/2001 had rejected the similar plea of workers of Cooperative Societies to reckon their past service in the Cooperative Stores prior to their absorption in Railways arising out of O.A.No.305/88 filed before the Madras Bench of the Tribunal.”

3. There is no ambiguity whatsoever in the requirement as stated above. Annexure A-6 order has not been varied or modified and has attained finality. The said order calls upon the respondents to grant the benefits as was granted to the respondents in Annexure A-7 judgment of the Hon'ble Apex Court. Denial of the same to the applicants is illegal and discriminatory.

4. The respondents have dealt with the applicants who were also the applicants in O.A.No.1154/2012 stating that *“the Supreme Court while delivering its judgment dated 16.9.2003 in C.A.No.5274 of 2001 had rejected the plea of the applicants as totally baseless ie., the continuity of service from induction in Co-operative Stores to the date of absorption in Railways.”* In as much as Supreme Court has rejected their (ie. workers in O.A.No.305/88) prayer of counting past service prior to the date of absorption in Railways, the said judgment is equally applicable to the applicants in the present O.A. Hon'ble CAT/ERS while passing the order in O.A.No.1154/2012 have stated that *“the Apex Court did not order the counting of service rendered in Co-operative Stores before 1.7.1990 and hence the same is also not made applicable to the applicants in this O.A. The Apex Court in C.A.No.5274/2001 had rejected the similar plea of workers of Co-operative Societies to reckon the past service in the Cooperative Stores prior to their absorption in Railways arising out of O.A.305/88 filed before the Madras Bench of the Tribunal. Therefore you are treated as direct recruit employee w.e.f 26.12.2008. As such you are not entitled for counting your past service rendered in the Cooperative Stores for any benefit including pensionary benefits.”*

5. The respondents have filed reply statement wherein an effort has been made to state that the order of the Apex Court in C.A.No.5274/2001 arising out of O.A.No.305/1988 is to the effect that no continuity of service from the date of induction in Cooperative Society can be treated as date of absorption in the Railways. The reply statement emphatically states that *“the Apex Court did not order the counting of service rendered in*

Cooperative Stores before 1.7.1990 and hence the same is also not made applicable to the applicants in this O.A.” The same is repeated *ad nauseum* in other parts of the reply statement as well.

6. Heard Shri.T.C.Govindaswamy, learned counsel for the applicant and Shri.Millu Dandapani, learned counsel for the respondents. We see no ambiguity in this except what is sought to be created by the respondents in the reply statement. The applicants who are also applicants in O.A.No.1154/2012 of this Tribunal had obtained a decision in their favour. It is unambiguously affirmed that the applicants are to be treated as directly recruited regular employees of the Railways with effect from 1.7.1990. This view has been taken on the basis of the ruling given by the Hon'ble Supreme Court in C.A.No.2492-2493 of 1998 wherein it was made clear that the group of 171 surviving employees who are to be absorbed as regular railway employees will be absorbed on the corresponding posts with effect from 1.7.1990. There is no claim made by the applicants in O.A.No.1154/2012 to pre-date the regularization from the date of their induction. What is directed is regularization with effect from 1.7.1990. The position being thus, we do not understand why the respondents in their statement have gone on reiterating their determination not to grant the applicants the benefits of their service before 1.7.1990. We also do not know why a separate O.A was necessary to be filed by the very same applicants when they ought to have pursued the implementation of the order in O.A.No.1154/2012 through an appropriate Application, now that that order has become final.

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7. The prayers contained in this O.A are allowed. Order treating these applicants as having been regularized as regular employees of the Railways with effect from 1.7.1990 are to be issued by the respondents within a period of 30 days from the date of receipt of a copy of this order and consequential benefits arising therefrom disbursed within a period of two months from that order without fail. There shall be no order as to costs.

(Dated ts the 12th day of April 2019)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00787/2016

- 1. Annexure A1** - A true copy of the letter bearing No.P(W)195/OA1154/2012/CAT/ERS dated 11th August 2016 issued from the office of the 2nd respondent to the 1st applicant.
- 2. Annexure A2** - A true copy of the letter bearing No.P(W)195/OA1154/2012/CAT/ERS dated 11th August 2016 issued from the office of the 2nd respondent to the 2nd applicant.
- 3. Annexure A3** - A true copy of the letter bearing No.P(W)195/OA1154/2012/CAT/ERS dated 11th August 2016 issued from the office of the 2nd respondent to the 3rd applicant.
- 4. Annexure A4** - A true copy of the letter bearing No.P(W)195/OA1154/2012/CAT/ERS dated 11th August 2016 issued from the office of the 2nd respondent to the 4th applicant.
- 5. Annexure A5** - A true copy of the letter bearing No.P(W)195/OA1154/2012/CAT/ERS dated 11th August 2016 issued from the office of the 2nd respondent to the 5th applicant.
- 6. Annexure A6** - A true copy of the order dated 28th January 2016 in O.A.No.1154/2012 rendered by this Hon'ble Tribunal.
- 7. Annexure A7** - A true copy of the judgment of the Hon'ble Apex Court in C.A.Nos.2492-2493 of 1998 dated 29th April 1998.
- 8. Annexure A8** - A true copy of the representation submitted by the 3rd applicant dated 18.1.2016 to the 3rd respondent.
- 9. Annexure R1** - A true copy of the Railway Board's letter No.E(NG)-II/99/RR-1/15 dated 30.5.2000.
- 10. Annexure R2** - A true copy of the list of employees vide letter dated 26.7.1996.
- 11. Annexure R3** - A true copy of the judgment of Hon'ble Apex Court in C.A.Nos.2492-2493 of 1998 dated 29.4.1998.
- 12. Annexure R4** - A true copy of the Railway Board's letter No.E(NG)-II/99/RR-1/15/Vol.IV dated 28.10.2005.
- 13. Annexure R5** - A true copy of the judgment of Hon'ble Apex Court in C.A.No.5274/2001 dated 16.9.2003.
- 14. Annexure R6** - A true copy of the order in O.A.No.305/1988 of CAT Madras Bench dated 29.6.1990.
- 15. Annexure R7** - A true copy of the Railway Board's letter No.E(W)90/CN/1-8 dated 19.11.1990.

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16. Annexure R8 - A true copy of the judgment of Hon'ble Apex Court in M.M.R.Khan vs. Union of India dated 27.2.1990.
