

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
ORIGINAL APPLICATION NO. 180/00195 of 2017**

Wednesday, this the 24th day of July, 2019

CORAM

Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member

P.A.Kunju Kunjamma, aged 61 years
D/o.Anthrayose, (Retired Track Woman/SNP,
Office of the Senior Section Engineer/Permanent Way/
Nagarcoil Junction)
Residing at: Puliparambil, Sachivothamapuram P.O
Kurichy, Changanacherry, Kottayam District-686 532

... Applicant

(By Advocate Mr.T.C.G Swamy & Ms.Kala T.G)

Versus

1. Union of India represented by the
General Manager
Southern Railway, Head Quarters Office
Park Town P.O
Chennai – 600 003
2. The Sr.Divisional Personnel Officer
Southern Railway
Trivandrum Division
Trivandrum – 695 014
3. The Divisional Railway Manager
Southern Railway
Trivandrum Division
Trivandrum – 695 014

..... Respondents

(By Advocate Mr.C.B.Sreekumar)

The above application having been finally heard on 23.7.2019,
the Tribunal on 24/7/2019 delivered the following:

ORDER

Per: **Mr.E.K.Bharat Bhushan, Administrative Member**

Original Application No.195/2017 is filed by Smt.P.A.Kunju Kunjamma, a Track Woman, who had superannuated from the service of Railways on 31.1.2015. She is aggrieved by the refusal of the respondents to comply with the directions of this Tribunal at Annexure A-1 and consequent failure to act as per terms issued as respondents' proceedings, a copy of which is at Annexure A-2. The reliefs sought in the Original Application are as follows:

“(i) Declare that the non-feasance on the part of the respondents to arrange to pay the arrears of pay and allowances for the period from 10.7.1993 to 22.5.2012, including the arrears of productivity linked bonus, leave salary, TA/DA etc. is arbitrary, discriminatory and unconstitutional and direct the respondents accordingly;

(ii) Direct the respondents to arrange to pay the arrears of pay and allowances for the period from 10.7.93 to 22.5.2012, including the arrears of productivity linked bonus, leave salary, TA/DA etc

(iii) Direct the respondents to forthwith arrange to re-fix the applicants pension and other retirement benefits and to grant the same immediately

(iv) Direct the respondents to forthwith arrange to pay interest@ 8% per annum one the arrears, to be calculated at least with effect from 1.1.2011 (3 months after A1) up to the date

of full and final settlement of the same;

(v) Award costs of and incidental to this application

(vi) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

2. Applicant, a retrenched Casual Labourer, was re-engaged as a substitute with effect from 10.3.1993. She was terminated from service on an allegation that she had falsely declared her age. Consequent to this, a major penalty memo was issued on 29.8.1997 under Rule 9 of the Railway Servants' (Discipline & Appeals) Rules, 1968. The applicant had obtained a favourable order in O.A 352/2009 from this Tribunal, setting aside the impugned memo, on 10.6.2010. The respondents were further directed to determine the applicant's date of birth on the basis of the applicant's affidavit dated 22.1.1993 and to grant her temporary status/regularisation in service. A copy of the order is at Annexure A-1. After further delay, the applicant was finally absorbed in regular service by order dated 2.12.2013. A copy of the same is available at Annexure A-2. The primary grievance of the applicant is that the terms mentioned in Annexure A-2 order, regularising the applicant's service with effect from 12.12.1996, have

not been complied with and she has been denied all benefits in terms of fixation of pay, grant of arrears, pay and allowances, leave salary, promotion etc. Aggrieved by this, she submitted a detailed representation to the 2nd respondent on 10.5.2016 (Annexure A-3).

3. Getting no reply to her representation, the applicant approached this Tribunal again by filing O.A 768/2016 and the same was disposed of by order dated 7.9.2016 directing the 2nd respondent to dispose of Annexure A-3 representation therein, within two months from the date of receipt of a copy of this order (Annexure A-4). In purported implementation of the directions of this Tribunal, 2nd respondent issued two orders, copies of which are available at Annexures A-6 and A-7. Annexure A-6 communication makes no mention regarding the arrears of pay and allowances and arrears of PLB, leave salary, TA/DA etc for the period from 10.7.1993 to 22.5.2012, neither is there any order of fixation of pay.

4. The respondents have filed a reply statement, in which the circumstances of her approaching this Tribunal on more than one occasion have been detailed. It is stated that the applicant has been absorbed as per Annexure A-2, after fulfilling all formalities including

medical examination, in the next available vacancy and the orders at Annexure A-2 from that perspective have been fully complied with. However, it is maintained that the order of this Tribunal in O.A 352/2009, pursuant to which she was appointed as temporary Track Woman with effect from 12.2.1996 in scale Rs.2610-3540, mentioned no back wages. Hence, Annexure A-2 also is silent on this question. It is maintained that she has been granted pay fixation benefits on proforma basis and granted actual benefits on the date of joining as temporary Track Woman i.e, 16.12.2013. Also paid is her DCRG, computation, full 300 days leave salary etc all amounting to Rs.6,66,943/-. She was granted 1st MACP in Grade Pay of Rs.1900 and 2nd MACP in Grade Pay Rs.2000/- and a sum of Rs.13,927/- was paid as MACP arrears. Applicant was also paid PLB for the period 2014-2015 amounting to Rs.14,410/-. No travelling allowance is due to her for the period from 10.7.1993 to 22.5.2013 as “she was not on actual duty”. It is firmly maintained that she is entitled to none of these benefits for the period when she was not on actual duty, which was from 10.7.1993 to 22.5.2012.

5. In the rejoinder filed, the applicant characterized the averments made in the reply statement by the respondents as factually

untrue and totally false. Although disciplinary action had been initiated against her, she had been in continuous employment during the period starting from 1993 and this is borne out in the judgment of this Tribunal in O.A 352/2009. In any case, respondents could not have been proceeded against her if she had not been working in the organisation.

6. The respondents have filed an additional reply statement reiterating their contentions made earlier. But in so far as the applicant's service from 10.7.1993 to 22.5.2012 is concerned, a change is seen from their earlier stance. Now it is maintained that she was a Casual Labourer and was not allotted regular work during the period but was doing cleaning job in the yard and other sundry jobs in the office. It is maintained that “as such, she was not entitled to wages applicable to regular Track Maintainers”. The fact that she had not been granted any travel allowance, according to the respondents, is an indication that she was only working as a Casual Labourer.

7. The sum and substance of the contention of the respondents is that the applicant cannot claim the benefit attached to the post of Track Maintainers from 1996 as she was not discharging the duties of Track

Maintainers during the claim period and all through the said period she was only granted daily wages as per Rules. She was deemed to have been appointed as Track Maintainer with effect from 19.2.1996 and given promotion and Track women Grade II with effect from 1.1.2003 in the Scale of Pay of Rs.2650-4000 on proforma basis and was given regular Pay Band from the date of actual joining in the post. She cannot claim any emoluments for the period during which she did not shoulder any responsibilities of the post of Track Maintainer. All eligible benefits under financial upgradation Scheme ACP/MACP have been granted to her before her retirement.

8. In a separate affidavit filed by the applicant, as directed by this Tribunal, the applicant avers that she had been granted temporary status with effect from 10.7.1993 and hence is entitled to get all service benefits applicable to temporary employees including scales of pay, leave salary, bonus etc. The fact that she had worked without break from 10.7.1993 is evident from the fact that in para 2 of Annexure A-1, the order of the Chief Personnel Officer, Southern Railway is seen extracted including the last paragraph of CPO's letter, which reads:

“Incidentally, the applicant is still continuing in

service by way of interim order granted to her”

9. Heard Shri.R.S.Sarat representing Mr.T.C.G Swamy, learned counsel for the applicant and Mr.C.B.Sreekumar, learned counsel for the respondents. Perused the records.

10. What emerges from this controversy is a short question. The applicant had obtained an order from this Tribunal in O.A 352/2009 by which her status as temporary worker was to be determined in accordance with existing rules. The respondent Railways issued elaborate order, copy of which is seen at Annexure A-2, the first para of which reads:

“ In compliance with the orders of the Hon'ble Central Administrative Tribunal, Ernakulam Bench in O.A 352/2009 dated 10.6.2010, Smt.P.A Kunju Kunjamma, Casual Labourer, SSE/PW/O/NCJ, who has been given offer of appointment vide this office letter of even No. dated 23.10.2013, as appointed as Temporary Trackwoman w.e.f 12.12.1996 in scale 2610-3540 plus other allowances as per rules consequent to her acceptance of the same and posted to SSE/PW/C/NCJ under the control of Section Engineer (Permanent Way), Southern Railway, Nagercoil.”

11. Although, the order is dated 2.12.2013, the implication of the applicant's appointment is with effect from 12.12.1996. Further, as per letter dated 24.1.2017 (Annexure A-6), the respondents again draw a graphic picture disclosing the following information:

“ In compliance with the orders of the Hon'ble Central Administrative Tribunal, Ernakulam Bench in O.A No.180/768/2016, your representation dated 10.5.2016 (Annexure A3) has been examined in detail.

You had been granted temporary status as casual labour in scale Rs.775-1025 (IV PC)/2610-3040 (V PC) w.e.f 10.7.1993 and empanelled as Track Woman in scale Rs.775-1025 (IV PC)/2610-3040 (V PC) w.e.f 12.2.1996, in compliance with the earlier orders of the Hon'ble Tribunal and upheld by the Hon'ble High Court of Kerala.

On account of medical decategorisation you were placed on Supernumerary post as Track Woman w.e.f 22.5.2012. Subsequently you had retired on superannuation w.e.f 31.1.2015.

On detailed examination of your representation, the following action has been taken by the administration.

1) The PLB & PLB arrears for the period 2014-15 amounting to Rs.14410/- has been arranged for payment through your SB Bank Account

2) On completion of 20 years of regular service, IInd MACP in PB-1 Rs.5200-20200 with GP Rs.2000/- is granted w.e.f 26.10.2014, vide O.O No.11/17/WP/NCJ dated 19.1.2017. Accordingly,

due arrears of Pay and allowances and revision of pension along with pensionary benefits shall be arranged shortly on account of MACP, under advice to you. The first MACP in Grade Pay of Rs.1900/- had already been granted w.e.f 1.9.2008, vide Memorandum No.V/P.483/MACP/PW/NCJ dated 10.11.2014.

3) As regards promotion, it is stated that you had been promoted to the post of erstwhile Track Woman-II in scale Rs.2650-4000 w.e.f 1.1.2003, on par with your junior. Consequent up on the implementation of Vith PC, the categories of erstwhile Track Woman in Scale Rs.2610-3540 and erstwhile Track Woman-II in Scale Rs.2650-4000 were merged in to a common Pay Band of PB-1 Rs.5200-20200 with Grade Pay Rs.1800/- w.e.f 1.1.2006. Since, you were not entitled for promotion as there was no vacancy as per seniority, you were granted 1st and IInd MACP on completion of 10 & 20 years respectively, in lieu of promotion. ”

12. From the above facts, it is clear that the applicant has been granted temporary status and accordingly scale of pay with effect from 10.7.1993. However, her salary and other benefits pertaining to the period from 1996 were not allowed on the ground that there was no specific direction contained in Annexure A-2 regarding this.

13. All entitlements under financial upgradation such as MACP and all entitlements in pay and allowances from the date of issuance of Annexure A-2 i.e, 2.12.2013 have been disbursed to the applicant. As

regards the entitled benefits from the date of posting has been given effect to i.e, 10.7.1993, it is stated that she did not work as a Track Woman during the period. Practically, this means that she has been given only a notional appointment and actual appointment only from the date of issue of Annexure A-2. All the while, she has been working as a Casual Labourer and was being paid wages on daily basis.

14. This is somewhat of an extra-ordinary situation where the applicant continued as a daily rated employee and after 20 years was given an appointment as Track Woman with retrospective effect from 12.12.1996. This was on the basis of the consideration extended in accordance with the directions of this Tribunal as at Annexure A-1. It is important to recount that the order of the Tribunal is dated 10th June 2010 and Annexure A-2 issued in consequence to the direction contained therein, is dated 2.12.2013 which essentially implies that a retrospective effect of 17 years is accorded to the applicant's posting through this order. This Tribunal understands that she has been gainfully employed all these years as a daily rated worker and was utilized for sundry tasks. In other words, her services as a Track Woman were never sought or obtained by the respondents. Thus, going by the principle of 'no work no pay' she is not entitled for emoluments

for working in a post which she never occupied. The direction of this Tribunal was only to consider her case as per her date of birth given in her affidavit and to “grant her temporary status/regularisation in service in her turn in accordance with existing rules”. The respondents have been magnanimous in treating her appointment as Track Woman as effective from 1996 and then granting her benefits of financial upgradation under ACP/MACP counting from initial engagement. The respondents are right in stating that her services were not utilised as a Track Woman and hence no monetary benefits are due to her at that level. She had been employed for sundry tasks, for which, she was paid on daily basis and she has been also given benefits of financial upgradation under ACP/MACP counting from initial engagement.

15. After considering all facts before us, we are of the view that the applicant is not entitled to any more benefits than those have been granted to her. Services as a Track Woman were never taken from her during the period from 1993 to 2013 when she continued as daily rated Labour. Yet counting 1993 as a notional date for engagement, all benefits have been granted to her under ACP/MACP apart from all benefits from 2013. There is no justified reason for the applicant to be granted any further benefits.

16. The Original Application fails and is dismissed. No costs.

(E.K BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

Annexure A1 - A true copy of order in O.A No.352/2009 dated 10.6.2010, rendered by this Hon'ble Tribunal

Annexure A2 - A true copy of the office order bearing No.215/13/WP dated 2.12.2013, issued by the 2nd respondent

Annexure A3 - A true copy of representation submitted by the applicant dated 10.5.2016 to the 2nd respondent

Annexure A4 - A true copy of order dated 7.9.2016 in O.A No.768/2016 rendered by this Tribunal

Annexure A5 - A true copy of Lawyer Notice dated 14 January 2017 addressed to the 2nd respondent \

Annexure A6 - A true copy of letter bearing No.V/P.407/I/ECL/Vol.XII dated 24.1.2017, issued by the 2nd respondent

Annexure A7 - A true copy of Office Order bearing No.11/2017/WP/NCJ dated 19.1.2017, issued from the office of the 2nd respondent

Annexure R1 - True copy of the O.O No.170/2013/WP dated 13.9.2013

Annexure R2 - True copy of the letter No.NCJ/6 dated 25.7.2018 issued by Senior Section Engineer/Permanent Way/Nagercoil

Annexure R3 - True copy of the Railway Board's letter No.E(NG)II/90/CL/1 dated 3/2/1994

Annexure R4 - True copy of the Memorandum No.V/P.407/1/ECL/Vol.XII dated 9.10.2013

Annexure R5 - True copy of the Office Order No.11/2017/WP/NCJ dated 19.1.2017

Annexure R6 - True copy of the letter No.V/P.407/1/ECL/Vol/XII dated 24.1.2017

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